

Internal Revenue bulletin

Bulletin No. 1998-13
March 30, 1998

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 98-16, page 18.

LIFO; price indexes; department stores. The January 1998 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, January 31, 1998.

Rev. Rul. 98-17, page 21.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning April 1, 1998, will be 7 percent for overpayments, 8 percent for underpayments, and 10 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 is 5.5 percent.

T.D. 8757, page 4.

REG-110965-97, page 42.

Final, temporary, and proposed regulations under section 141 of the Code provide guidance to state and local governments that issue bonds for output facilities. A public hearing on the proposed regulations will be held on April 28, 1998.

T.D. 8758, page 15.

Final regulations under section 468A of the Code relate to requests for revised schedules of ruling amounts for nuclear decommissioning reserve funds.

T.D. 8759, page 19.

Final regulations under section 905 of the Code relate to the substantiation requirements for taxpayers claiming foreign tax credits.

EXEMPT ORGANIZATIONS

Announcement 98-25, page 43.

A list is given of organizations now classified as private foundations.

EMPLOYMENT TAX

Rev. Proc. 98-26, page 26.

Electronic filing; magnetic media; 1998 Form W-4 specifications. Specifications for filing Form W-4, Employee's Withholding Allowance Certificate, magnetically or electronically, are set forth.

ADMINISTRATIVE

Notice 98-19, page 24.

The "differential earnings rate" under section 809 of the Code is tentatively determined for 1997 together with the "recomputed differential earnings rate" for 1996.

Notice 98-20, page 25.

This notice provides guidance on the ordering and taxation of capital gain distributions from a charitable remainder trust in light of the changes made to section 1(h) of the Code by the Taxpayer Relief Act of 1997.

Finding Lists begin on page 47.

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our prod-

ucts and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency, and fairness.

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and proce-

dures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis and are published in the first Bulletin of the succeeding semiannual period, respectively.

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Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 141.—Private Activity Bond; Qualified Bond

26 CFR 1.141–7T: *Special rules for output facilities (temporary).*

T.D. 8757

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Obligations of States and Political Subdivisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that provide guidance to state and local governments that issue bonds for output facilities. This document also contains temporary regulations that provide guidance to certain nongovernmental persons that are engaged in the local furnishing of electric energy or gas using facilities financed with state or local government bonds. These temporary regulations reflect changes made by the Tax Reform Act of 1986 and the Small Business Job Protection Act of 1996. The temporary regulations will affect State and local government issuers of obligations and nongovernmental persons engaged in the local furnishing of electric energy or gas after the effective date of these regulations.

The text of these temporary regulations also serves as the text of REG–110965–97.

DATES: These regulations are effective January 22, 1998.

For dates of applicability, see §§1.141–15T, 1.142(f)(4)–1T(g), and 1.150–5T(b) of these regulations.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Allan Seller (202) 622-3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR part 1) under sec-

tion 141 by providing special rules for state and local bonds issued for output facilities. This document also amends the Income Tax Regulations under section 142(f)(4) by providing rules for nongovernmental persons engaged in local furnishing of electric energy or gas using facilities financed with state or local bonds to make the election provided in that section. Proposed regulations §§1.141–7 and 1.141–8, published on December 30, 1994, (59 FR 67658) addressed the application of the private activity bond tests under section 141(b)(2) to output contracts for output facilities and the application of the \$15 million limit under section 141(b)(4) to output facility financings. These sections (the 1994 proposed output regulations) are withdrawn. Public comments submitted on the 1994 proposed output regulations, however, have been taken into account in formulating these temporary regulations.

Explanation of Provisions

A. Section 1.141–7T Special Rules for Output Facilities.

1. Basis for Special Rules for Output Facilities.

The 1994 proposed output regulations contain special rules for applying the private business tests to output contracts. Among the reasons for special rules for output facilities are that governmentally-owned utilities are often under an open-ended obligation to assure service to their customers and that general public customers are ordinarily required to make continuing payments for service. Output facilities also require special rules because the economic benefit provided by these facilities is usually the use of fungible property, such as electric power or water. The temporary regulations continue the approach of the proposed regulations, but contain a number of new provisions, consistent with the general principles of the existing regulations under §1.103–7(b)(5), that take into account changes in the electric industry.

2. The Benefits and Burdens Standard.

The 1994 proposed output regulations provide that a contract to sell output of a financed facility to a nongovernmental

person may cause the private business tests of section 141(b) to be met if it has the effect of transferring to that nongovernmental person the benefits of owning the facility and the burdens of paying debt service on the facility. The temporary regulations adopt this standard, but clarify its application.

For purposes of the standard, the temporary regulations generally provide that use of output on a basis different from the general public has the effect of transferring the benefits of ownership. Similarly, contracts that provide a substantial certainty that payments for output will be made under the terms of the contract, other than on a short-term basis, have the effect of transferring the burden of paying debt service on a facility. The standard does not require that the burdens of ownership for general tax purposes be transferred to a nongovernmental person.

3. Requirements Contracts.

The 1994 proposed output regulations provide that take or pay contracts, take contracts, and certain requirements contracts meet the benefits and burdens standard. Many commentators, noting that §1.103–7(b)(5) does not expressly refer to requirements contracts, suggested that requirements contracts should never meet the benefits and burdens standard.

The temporary regulations narrow the rule for requirements contracts, by providing that a requirements contract meets the benefits and burdens test only to the extent that the issuer reasonably expects that it is substantially certain that payments for output will be made under the contract. Such a requirements contract is in substance equivalent to a take contract. A retail requirements contract generally does not meet this standard, unless the contract requires substantial termination payments or contains other terms that establish substantial certainty of payment. Whether the payments under a wholesale requirements contract are substantially certain to be made is determined on the basis of all the facts and circumstances, taking into account such factors as whether the purchaser's customer base has significant indicators of stability, whether the contract covers historical requirements of the purchaser, and whether

the purchaser has agreed not to construct or acquire other power resources.

4. *Special Rule for Output Contracts With Specific Performance Rights.*

The 1994 proposed output regulations provide that a requirements contract meets the benefits and burdens standard if the purchaser has priority rights to the output (or rights to control the allocation of the available output).

The temporary regulations generally provide that any output contract that provides the purchaser with specific rights to control the output or with other specific performance rights to the use of output of a financed facility meets the benefits and burdens test, even if the issuer reasonably expects that it is not substantially certain that payments will be made under the contract. This different standard applies to output contracts that provide the purchaser with specific performance rights because those contracts closely resemble leases, and, thus, provide more substantial rights to the use of a financed facility.

5. *Security Interest Test.*

The 1994 proposed output regulations do not address how the security interest test applies to output contracts.

The temporary regulations provide that payments made or to be made under an output contract pledged as security for an issue are taken into account under the private security or payment test even if payment under the contract is not substantially certain. This rule is appropriate because it is reasonable to presume that payments under a contract pledged as security for an issue are material to the payment of debt service on an issue.

6. *Use of Nameplate Capacity to Determine Available Output.*

The 1994 proposed output regulations measure the available output of a facility by reference to nameplate capacity, but further provide that, if nameplate capacity or its equivalent is greater than 150 percent of the average expected output, average expected output is used instead of nameplate capacity. In addition, nameplate capacity is reduced by scheduled maintenance. Commentators suggested that reference to nameplate capacity to determine available output is a bright-line, administrable test, and that the reductions to nameplate capacity in the

1994 proposed output regulations should be deleted.

The temporary regulations generally provide that nameplate capacity may be used as a reference to determine available output of a generating facility. This rule acknowledges that, consistent with prudent utility practice, governmentally-owned utilities may be required to acquire or construct facilities with excess capacity for their current or future reserves. To prevent tax-exempt financings that are inconsistent with the purposes of section 141, however, the temporary regulations provide that this rule does not apply if the issuer reasonably expects on the issue date that nongovernmental persons that are treated as private business users will purchase 30 percent or more of the actual output of the facility. In such a case, the Commissioner may determine available output on another reasonable basis. In addition, the temporary regulations clarify that, if a limited source of supply constrains the output of a facility (for example, if seasonal differences in water flow constrain output of a hydroelectric facility), the available output must be determined by taking into account these constraints. The temporary regulations also delete the rule that nameplate capacity is reduced by scheduled maintenance.

7. *Exception for Swapping and Pooling Arrangements.*

The 1994 proposed output regulations provide that certain arrangements to swap and pool power do not meet the private business tests.

The temporary regulations simplify this exception and expand it, so that it includes swapping arrangements entered into to enhance reliability of a system.

8. *Exceptions for Short-term Sales of Output.*

The 1994 proposed output regulations provide that 30-day agreements for spot sales of excess capacity do not result in private business use.

The temporary regulations provide that the exceptions for short-term use that apply to other types of arrangements under the general private activity bond rules in §1.141-3 also apply to output contracts. Thus, in general an output contract that is available to the general public may have a term up to 180 days; an output

contract that is not treated as general public use, but that is offered on the basis of generally applicable or uniformly applied rates, may have a term of up to 90 days; and an output contract that is specially negotiated may have a term of up to 30 days.

9. *Special Exceptions for Sales of Output Attributable to Excess Generating Capacity which Mitigate Stranded Costs.*

The 1994 proposed output regulations provide that a single nonrenewable contract for a term of not greater than 1 year is not treated as private business use. Commentators suggested that longer term, renewable contracts to sell output attributable to excess generating capacity should be disregarded under the private business use test. Commentators noted that the excess generating capacity problem may be exacerbated by the development of open-access regulatory policies and other factors.

The temporary regulations respond to these special considerations by providing a more flexible exception for sales of output attributable to excess generating capacity that results from the offering of nondiscriminatory, open access tariffs. This exception is also consistent with the Federal Energy Regulatory Commission policy that utilities should take reasonable steps to mitigate the imposition of charges to recover legitimate, prudent, and verifiable stranded costs associated with providing open access. Under this exception, a contract to sell excess power is not treated as private business use if the term of the contract (including all renewal options) is not greater than 3 years, the issuer does not issue tax-exempt bonds to increase the capacity of its generation system during the term of the contract, the governmental owner offers non-discriminatory, open access transmission tariffs pursuant to the FERC rules (or comparable state law provisions pursuant to a plan approved by the FERC), all of the output sold under the contract is excess capacity resulting from participation in open access, the contract mitigates stranded costs of the owner that are attributable to entry into the open access system, and stranded costs recovered under the contract by that owner are used to redeem tax-exempt bonds as promptly as reasonably practical.

10. *Special Exceptions for Transmission Facilities.*

The 1994 proposed output regulations provide special rules for transmission facilities, which are intended to respond to the development of regulatory policies that require or encourage open access to transmission systems. Under these special rules, in general, the use of transmission facilities is not private business use to the extent that it results from an order or actions taken in response to (or to prevent) an anticipated order by the United States that those facilities be used by a particular nongovernmental person, provided that the transmission facilities were sized based on the issuer's reasonable expectations about the amount of wheeling. The 1994 proposed output regulations contain a number of exceptions to this rule, which are designed to prevent the tax-exempt financing of facilities constructed for use by nongovernmental persons. The 1994 proposed output regulations also provide that an issuer must take remedial action if more than 20 percent of a transmission facility is so used by a nongovernmental person.

Commentators suggested that the exceptions for use of transmission systems should be made more flexible to accommodate the development of open access regulatory policies. Commentators noted that measurement of use of a transmission system raises a number of complex technical issues. For example, capacity or available output may be much more readily determined for a generating unit than for a transmission system. Some commentators suggested that all use of a transmission system pursuant to standard tariffs should be treated as general public use. Other commentators suggested that any rules addressing open access required by the FERC should also similarly address open access required by state public utility commissions.

The temporary regulations broaden the exceptions for use of transmission facilities, but do not treat all use of transmission facilities pursuant to standard tariffs as general public use. Under § 1.141-2(d), an action taken in response to a specific FERC order to wheel power under sections 211 and 212 of the Federal Power Act (16 U.S.C. 824j and 824k) would otherwise qualify for an exception from the deliberate action rule because it

is taken in response to a regulatory directive made by the federal government. The temporary regulations additionally provide that an action taken in anticipation of such an order is not a deliberate action.

The temporary regulations also provide a special exception for transmission facilities pursuant to which an action is not treated as a deliberate action if it is taken to implement the offering of non-discriminatory, open access for the use of financed transmission facilities in a manner consistent with FERC rules, including reciprocity conditions of FERC Order No. 888 (61 F.R. 21540, May 10, 1996), pursuant to a plan approved by the FERC. The special exception also applies to orders and rules of state regulatory authorities pursuant to a plan approved by the FERC that are comparable to certain FERC orders and rules. This exception does not apply, however, to the sale, exchange, or other disposition of bond-financed transmission facilities to a nongovernmental person.

Section 1.141-2(d)(1) provides that an issue is an issue of private activity bonds if the issuer reasonably expects, as of the issue date, that the issue will meet either the private business tests or the private loan financing test or if the issuer takes a deliberate action, subsequent to the issue date, that causes the conditions of either the private business tests or the private loan financing test to be met. Thus, reasonable expectations about private business use of transmission facilities under non-discriminatory, open-access tariffs, must be taken into account on the issue date of bonds financing those facilities. A special transition rule applies to bonds (other than advance refunding bonds) that refund bonds issued prior to July 9, 1996 (the effective date of FERC Order No. 888). Because an issuer is in general not required to apply the temporary regulations to refunding bonds issued after the effective date that do not have a weighted average maturity longer than the remaining weighted average maturity of the refunded bonds, the special transition rule will apply only if the issuer chooses to apply the temporary regulations. Whether bonds issued after July 9, 1996, to finance output facilities met the reasonable expectations test of section 141 because of the possibility of actions taken to implement open access tariffs is appro-

priately determined on a facts and circumstances basis.

These special rules for transmission facilities are appropriate because of the unique statutory and regulatory regime that applies to transmission facilities.

B. *1.141-8T \$15 million Limitation for Output Facilities.*

1. *Clarification of Computation of Nonqualified Amount.* The 1994 proposed output regulations provide guidance on the special \$15 million limitation on output facilities of section 141(b)(4). In general, this limitation is based on the "non-qualified amount" of an issue or issues that finance a single project.

The temporary regulations clarify that, in determining the total nonqualified amount for issues financing a project, the nonqualified amount is first determined on an issue-by-issue basis, and that these amounts are then aggregated. The temporary regulations also provide a simpler method for determining how much the nonqualified amount of an issue is reduced when principal of the issue is paid. Under this method, the nonqualified amount of an issue is reduced by the ratio of adjusted issue price over issue price.

C. *Section 1.142(f)(4)-1T Manner of Making Election to Terminate Tax-exempt Bond Financing.*

Section 142(f)(4) permits a person engaged in the local furnishing of electric energy or gas that uses facilities financed with exempt facility bonds under section 142(a)(8) and that expands its service area in a manner inconsistent with the requirements of sections 142(a)(8) and 142(f) to make an election to ensure that those bonds will continue to be treated as exempt facility bonds. In order to make the election the person engaged in local furnishing must, among other things, agree to redeem all outstanding bonds that financed the facilities not later than 6 months after the later of the earliest date on which the bonds may be redeemed or the date of the election. The temporary regulations set forth the required time and manner of making this election. In general, the election must be made on or before the 90th day after the later of (i) the date of the service area expansion or (ii) the effective date of the temporary regulations.

D. *§1.150–5T Filing Notices and Elections.*

The temporary regulations specify that notices and elections under section 142(f)(4)(B) and §1.141–12(d)(3) must be filed with the Chief, Employee Plans and Exempt Organizations Division of the appropriate key district office.

E. *Need for Temporary Regulations and Request for Public Comments*

Congress passed the Federal Energy Act of 1992 to encourage deregulation of the electric power industry. Since that time, the Federal Energy Regulatory Commission and various states have adopted policies to open up access to transmission facilities. Treasury and the IRS are aware that these initiatives are causing rapid changes in the electric power industry, and have received many comments asking for immediate guidance under section 141 regarding the effect on the tax-exempt status of bonds of certain restructuring transactions necessary for utilities to participate in a deregulated electric utility environment. For example, several comments state that the restructuring initiatives in various states and regions may not proceed until Treasury and the IRS clarify the extent to which municipal utilities may transfer control of certain assets financed with tax-exempt bonds to an independent system operator. Based on these considerations, it has been determined that immediate regulatory guidance is necessary to ensure efficient administration of the tax laws.

The regulations are published in both temporary and proposed form to provide immediate guidance on which issuers can rely in evaluating their participation in open access regimes, while providing the opportunity for public comment. In addition, Treasury and the IRS believe that providing guidance on the effect of open access participation is more appropriately accomplished by regulation than by private letter ruling. Treasury and the IRS are also aware, however, that restructuring efforts are evolving and uncertain, and that new types of arrangements may be developed to implement restructuring. Many of the issues that will arise may need to be addressed legislatively. Accordingly, the regulations are published in temporary form with the expectation the

Treasury and the IRS will reexamine them in light of new developments within the next three years.

Comments are invited on whether further guidance is needed to address the new types of contractual arrangements that are arising in the electric power industry. In particular, comments are invited on whether there are any instances in which an option of a nongovernmental purchaser to purchase output of a bond-financed facility should not be taken into account as private business use.

Effective Dates

Sections 1.141–7T and 1.141–8T are applicable to bonds issued on or after February 23, 1998.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the provisions of these regulations that impose a collection of information requirement on small entities do not have a significant impact on a substantial number of small entities. This certification is based upon the fact that in the years 1987 through 1993 a total of only 61 different state or local government issuers of exempt facility bonds issued under section 142(f) for facilities for the local furnishing of electric energy or gas filed information returns with the Internal Revenue Service under section 149(e). Further, an election under section 142(f)(4) is in no event required to be filed with the Internal Revenue Service more than once. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Michael G. Bailey and Allan

Seller, Office of Assistant Chief Counsel (Financial Institutions & Products), and Nancy M. Lashnits, formerly of that office. However, other personnel from IRS and the Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.141–0 is amended by removing the entries for §§1.141–7 and 1.141–8 and adding entries to the table in numerical order to read as follows:

§1.141–0 Table of contents.

* * * * *

§1.141–7T Special rules for output facilities (temporary).

- (a) Overview.
- (b) Definitions.
 - (1) Available output.
 - (2) Measurement period.
 - (3) Sale at wholesale.
 - (4) Stranded costs.
 - (5) Take contract and take or pay contract.
- (6) Transmission facilities.
- (7) Nonqualified amount.
- (c) Output contracts.
 - (1) General rule.
 - (2) Benefits and burdens test.
 - (3) Take contract or take or pay contract.
 - (4) Requirements contracts.
 - (5) Contract with specific performance rights.
- (d) Measurement of private business use.
- (e) Measurement of private security or payment.
- (f) Exceptions for certain contracts.
 - (1) Small purchases of output.
 - (2) Swapping and pooling arrangements.
 - (3) Short-term output contracts.
 - (4) Special 3-year exception for sales of output attributable to excess generating capacity resulting from participation in open access.
 - (5) Special exceptions for transmission facilities.

- (6) Certain conduit parties disregarded.
- (g) Allocations of output facilities and systems.
- (1) Facts and circumstances analysis.
- (2) Illustrations.
- (3) Transmission contracts.
- (4) Allocation of payments.
- (h) Examples.

§1.141–8T \$15 million limitation for output facilities (temporary).

- (a) In general.
 - (1) General rule.
 - (2) Reduction in \$15 million output limitation for outstanding issues.
 - (3) Benefits and burdens test applicable.
- (b) Definition of project.
 - (1) General rule.
 - (2) Separate ownership.
 - (3) Generating property.
 - (4) Transmission.
 - (5) Subsequent improvements.
 - (6) Replacement property.
- (c) Examples.

* * * * *

§1.141–15T Effective dates (temporary).

- (a) through (e) [Reserved].
- (f) Effective dates for certain regulations relating to output facilities.
 - (1) General rule.
 - (2) Transition rule for requirement contracts.
- (g) Refunding bonds.
- (h) Permissive retroactive application.
- (i) Permissive retroactive application of certain regulations pertaining to output contracts.

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Par. 3. Section 1.141–2 is amended by adding a sentence at the end of paragraph (d)(3)(ii)(B) to read as follows:

§1.141–2 Private activity bond tests.

* * * * *

- (d) * * *
- (3) * * *
- (ii) * * *
- (B) * * * See §1.141–7T(f)(5).

* * * * *

§§1.141–7 and 1.141–8 [Removed]

Par. 3a. Sections 1.141–7 and 1.141–8 are removed.

Par. 4. Sections 1.141–7T and 1.141–8T are added to read as follows:

§1.141–7T Special rules for output facilities (temporary).

(a) *Overview.* This section provides special rules to determine whether arrangements for purchases of output from an output facility cause an issue of bonds to meet the private business tests. For this purpose, unless otherwise stated, water facilities are treated as output facilities. Section 1.141–3 generally applies to determine whether other types of arrangements for use of an output facility cause an issue to meet the private business tests.

(b) *Definitions.* For purposes of this section and §1.141–8T, the following definitions and rules apply:

(1) *Available output.* The available output of a facility financed by an issue is determined by multiplying the number of units produced or to be produced by the facility in one year by the number of years in the measurement period of that facility for that issue.

(i) *Generating facilities.* The number of units produced or to be produced by a generating facility in one year is determined by reference to its nameplate capacity or the equivalent (or where there is no nameplate capacity or the equivalent, its maximum capacity), which is not reduced for reserves or other unutilized capacity.

(ii) *Transmission and other output facilities.* (A) *In general.* For transmission, cogeneration, and other output facilities, available output must be measured in a reasonable manner to reflect capacity.

(B) *Electric transmission facilities.* Measurement of the available output of all or a portion of electric transmission facilities may be determined in a manner consistent with the reporting rules and requirements for transmission networks promulgated by the Federal Energy Regulatory Commission (FERC). For example, for a transmission network, the use of aggregate load and load share ratios in a manner consistent with the requirements of the FERC may be reasonable. In addition, depending on the facts and circumstances, measurement of the available output of transmission facilities using thermal capacity or transfer capacity may be reasonable.

(iii) *Special rule for facilities acquired or constructed primarily for use by private business users.* If an issuer reasonably expects on the issue date that persons that are treated as private business users will purchase more than 30 percent of the actual output of the facility financed with the issue, the Commissioner may determine the number of units produced or to be produced by the facility in one year on a reasonable basis other than by reference to nameplate capacity, such as the average expected annual output of the facility. For example, the Commissioner may treat the reasonably expected annual output of a financed peaking electric generating unit as the available output of that unit if the issuer reasonably expects, on the issue date of bonds that finance the unit, that an investor-owned utility will purchase 30 percent of the actual output of the facility under a take or pay contract, even if the amount of output purchased is less than 10 percent of the available output determined by reference to nameplate capacity. The reasonably expected annual output of the generating facility must be consistent with the capacity reported for prudent reliability purposes.

(iv) *Special rule for facilities with a limited source of supply.* If a limited source of supply constrains the output of an output facility, the number of units produced or to be produced by the facility must be determined by reasonably taking into account those constraints. For example, the available output of a hydroelectric unit must be determined by reference to the reasonably expected annual flow of water through the unit.

(2) *Measurement period.* The measurement period of an output facility financed by an issue is determined under §1.141–3(g).

(3) *Sale at wholesale.* For purposes of this section, a sale at wholesale means a sale of output to any person for resale.

(4) *Stranded costs.* For purposes of this section, *stranded costs* means stranded costs as defined in 18 CFR 35.26 and costs that an issuer incurred to provide service to a wholesale or retail customer that subsequently becomes, in whole or in part, an unbundled transmission customer and that an issuer is authorized to recover by the FERC or a state regulatory authority.

(5) *Take contract and take or pay contract.* A *take contract* is an output contract under which a purchaser agrees to pay for the output under the contract if the output facility is capable of providing the output. A *take or pay contract* is an output contract under which a purchaser agrees to pay for the output under the contract, whether or not the output facility is capable of providing the output.

(6) *Transmission facilities.* *Transmission facilities* are facilities for the transmission or distribution of output. Transmission facilities include facilities necessary to provide ancillary services required to be offered as part of open access transmission tariffs under rules promulgated by the FERC under sections 205 and 206 of the Federal Power Act (16 U.S.C. 824d and 824e). Thus, if a facility also serves another function (for example, a facility that provides for operating reserves for transmission and also provides generation) an allocable portion of the facility is treated as a transmission facility.

(7) *Nonqualified amount.* The nonqualified amount with respect to an issue is determined under section 141(b)(8).

(c) *Output contracts*—(1) *General rule.* The purchase by a nongovernmental person of the available output of an output facility (output contract) financed with the proceeds of an issue is taken into account under the private business tests if the purchase has the effect of transferring substantial benefits of owning the facility and substantial burdens of paying the debt service on bonds used (directly or indirectly) to finance the facility (the benefits and burdens test). See paragraph (c)(5) of this section for other output contract arrangements that are taken into account under the private business tests. See also §1.141–8T for rules for when an issue that finances an output facility (other than a water facility) meets the private business tests because the nonqualified amount of the issue exceeds \$15 million.

(2) *Benefits and burdens test*—(i) *Benefits of ownership.* An output contract transfers substantial benefits of owning a facility if the contract gives the purchaser (directly or indirectly) rights to capacity of the facility on a basis that is preferential to the rights of the general public.

(ii) *Burdens of paying debt service.* An output contract transfers substantial burdens of paying debt service on an issue to

the extent that the issuer reasonably expects that it is substantially certain that payments will be made under the terms of the contract (disregarding default, insolvency, or other similar circumstances). For example, an output contract is treated as transferring burdens of paying debt service on an issue if payments must be made upon contract termination.

(iii) *Payments pursuant to pledged contract.* Payments made or to be made under the terms of an output contract that is pledged as security for an issue are taken into account under the private business tests even if the issuer reasonably expects that it is not substantially certain that payments will be made under the contract (disregarding default, insolvency, or other similar circumstances). For this purpose, an output contract is pledged as security only if the bond documents provide that the pledged contract cannot be substantially amended without the consent of bondholders or a trustee for the bondholders.

(3) *Take contract or take or pay contract*—(i) *In general.* The benefits and burdens test is met if a nongovernmental person agrees pursuant to a take contract or a take or pay contract to purchase the available output of a facility. See paragraphs (d) and (e) of this section for rules regarding measuring the use of, and payments on debt service for, an output facility for determining whether the private business tests are met.

(ii) *Transmission contracts.* In the case of a transmission facility, an agreement to provide firm or priority transmission services is generally treated as a take contract or a take or pay contract. The extent to which transmission services are interruptible is an important factor indicating that a contract for transmission services is not treated as a take contract or a take or pay contract.

(4) *Requirements contracts*—(i) *In general.* A requirements contract under which a nongovernmental person agrees to purchase all or part of its output requirements is taken into account under the private business tests only to the extent that, based on all the facts and circumstances, the contract meets the benefits and burdens test. See §1.141–15T(f)(3) for special effective dates for the application of this paragraph (c)(4) to issues financing facilities subject to requirements contracts.

(ii) *Significant factors.* Significant factors that tend to establish that the benefits and burdens test is met under the rule set forth in paragraph (c)(4)(i) of this section include—

(A) The purchaser's customer base has significant indicators of stability, such as large size, diverse composition, and a substantial residential component;

(B) The contract covers historical requirements of the purchaser, rather than only projected requirements that are in addition to historical requirements; and

(C) The purchaser agrees not to construct or acquire other power resources to meet the requirements covered by the contract.

(iii) *Special rule for retail requirements contracts.* In general, a requirements contract that is not a sale at wholesale does not meet the benefits and burdens test because the obligation to make payments on the contract is contingent on the output requirements of a single user. Such a requirements contract in general meets the benefits and burdens test, however, to the extent that it contains contractual terms that obligate the purchaser to make payments that are not contingent on the output requirements of the purchaser (such as significant termination payments) or that obligate the purchaser to have output requirements. For example, a requirements contract with an industrial purchaser meets the benefits and burdens test if the purchaser enters into additional contractual obligations with the issuer or another governmental unit not to cease operations.

(5) *Contract with specific performance rights.* An output contract that provides the purchaser with specific rights to control the output of a facility or with other specific performance rights to the use of output of a facility is generally taken into account under the private business tests, even if the benefits and burdens test is not met. Payments made and to be made under such a contract are generally taken into account under the private payment test, even if the issuer does not reasonably expect that it is substantially certain that payments will be made under the contract (disregarding default, insolvency, or other similar circumstances). A customer's normal entitlement to receive utility service (for example, an entitlement to reasonable protection against blackouts in times of high demand through rotating the effects

of blackouts) is not treated as a specific performance right for this purpose.

(d) *Measurement of private business use.* If an output contract results in private business use under this section, the amount of private business use generally is the capacity that must be reserved for the nongovernmental person under prudent reliability standards. For example, in the case of a take contract for a peaking electric generating unit, under which a nongovernmental person has priority rights to use capacity at any time for the entire term of the bonds, but under which the total energy purchases are limited in any one year to 10 percent of annual available output (determined by reference to nameplate capacity), the amount of private business use is the amount of capacity that must be reserved for that nongovernmental person under prudent reliability standards, which may be as much as 100 percent.

(e) *Measurement of private security or payment.* The measurement of payments made or to be made by nongovernmental persons under output contracts as a percent of the debt service of an issue is determined under the rules provided in §1.141-4.

(f) *Exceptions for certain contracts—*
(1) *Small purchases of output.* An output contract is not taken into account under the private business tests if the purchaser is not required under the contract to make a payment that is substantially certain to be made under paragraph (c)(2)(ii) of this section in any year greater than 0.5 percent of the average annual debt service on an issue that finances the output facility.

(2) *Swapping and pooling arrangements.* An agreement that provides for swapping or pooling of output by one or more governmental persons and one or more nongovernmental persons does not result in private business use of the output facility owned by the governmental person to the extent that—

(i) The swapped output is reasonably expected to be approximately equal in value (determined over periods of one year or less); and

(ii) The purpose of the agreement is to enable each of the parties to satisfy different peak load demands, to accommodate temporary outages, to diversify supply, or to enhance reliability in accordance with prudent reliability standards.

(3) *Short-term output contracts.* The exceptions for short-term arrangements provided in §1.141-3(c) and (d)(3) apply to output contracts. For example, a spot sale for use for a period of 90 days on the basis of rates that are generally applicable and uniformly applied generally does not result in private business use, and a spot sale for use for a period of 30 days on the basis of rates that are specially negotiated generally does not result in private business use.

(4) *Special 3-year exception for sales of output attributable to excess generating capacity resulting from participation in open access.* The purchase of output of an output facility (not including a water facility) by a nongovernmental person is not treated as private business use if all of the following requirements are met:

(i) The term of the contract is not longer than 3 years, including all renewal options.

(ii) The issuer does not make expenditures to increase the generating capacity of its system during the term of the contract that are, or will be, financed with proceeds of tax-exempt bonds.

(iii) The governmental owner offers non-discriminatory, open access transmission tariffs for use of its transmission system pursuant to rules promulgated by the FERC under sections 205 and 206 of the Federal Power Act (16 U.S.C. 824d and 824e) (or comparable provisions of state law pursuant to a plan approved by the FERC).

(iv) All of the output sold under the contract is attributable to excess capacity resulting from the offer of the non-discriminatory, open access transmission tariffs referred to in paragraph (f)(5)(ii) of this section.

(v) The contract mitigates stranded costs of the governmental owner that are attributable to the offer of the non-discriminatory, open access transmission tariffs referred to in paragraph (f)(5)(ii) of this section.

(vi) Any stranded costs recovered by the governmental owner (including amounts recovered under the contract) with respect to the output facility under rules promulgated by the FERC under the Federal Power Act (or comparable provisions of state law) are applied as promptly as is reasonably practical to redeem tax-exempt bonds that financed that facility in a manner consistent with §1.141-12.

(5) *Special exceptions for transmission facilities—*(i) *Mandated wheeling.* Entering into a contract for the use of transmission facilities financed by an issue is not treated as a deliberate action under §1.141-2(d) if—

(A) The contract is entered into in response to (or in anticipation of) an order by the United States under sections 211 and 212 of the Federal Power Act (16 U.S.C. 824j and 824k) (or a state regulatory authority under comparable provisions of state law pursuant to a plan approved by the FERC); and

(B) The terms of the contract are bona fide and arm's length, and the consideration paid is consistent with the provisions of section 212(a) of the Federal Power Act.

(ii) *Actions taken to implement non-discriminatory, open access.* An action is not treated as a deliberate action under §1.141-2(d) if it is taken to implement the offering of non-discriminatory, open access tariffs for the use of transmission facilities financed by an issue in a manner consistent with rules promulgated by the FERC under sections 205 and 206 of the Federal Power Act (16 U.S.C. 824d and 824e) (or by a state regulatory authority under comparable provisions of state law pursuant to a plan approved by the FERC). This paragraph (f)(5)(ii) does not apply, however, to the sale, exchange, or other disposition of transmission facilities to a nongovernmental person.

(iii) *Application to reasonable expectations test to certain current refunding bonds.* An action taken or to be taken with respect to transmission facilities refinanced by an issue is not taken into account under the reasonable expectations test of §1.141-2(d) if—

(A) The action is described in paragraph (f)(5)(i) or (ii) of this section;

(B) The bonds of the issue are current refunding bonds that, directly or indirectly, refund bonds issued before July 9, 1996; and

(C) The weighted average maturity of the refunding bonds is not greater than the remaining weighted average maturity of those prior bonds.

(6) *Certain conduit parties disregarded.* A nongovernmental person acting solely as a conduit for the exchange of output among governmentally owned and operated utilities is disregarded in deter-

mining whether the private business tests are met with respect to financed facilities owned by a governmental person. Use of property by a power marketer in the trade or business of purchasing and reselling power, however, is taken into account under the private business tests.

(g) *Allocations of output facilities and systems*—(1) *Facts and circumstances analysis.* Whether output sold under an output contract is allocated to a particular facility (for example, a generating unit), to the entire system of the seller of that output (net of any uses of that system output allocated to a particular facility), or to a portion of a facility is based on all the facts and circumstances. Significant factors to be considered in determining the allocation of an output contract to financed property are the following:

(i) The extent to which it is physically possible to deliver output to or from a particular facility or system.

(ii) The terms of a contract relating to the delivery of output (such as delivery limitations and options or obligations to deliver power from additional sources).

(iii) Whether a contract is entered into as part of a common plan of financing for a facility.

(iv) The method of pricing output under the contract, such as the use of market rates rather than rates designed to pay debt service of tax-exempt bonds used to finance a particular facility.

(2) *Illustrations.* The following illustrate the factors set forth in paragraph (g)(1) of this section:

(i) *Physical possibility.* Output from a generating unit that is fed directly into a low voltage distribution system of the owner of that unit and that cannot physically leave that distribution system generally must be allocated to those receiving electricity through that distribution system. Output may be allocated without regard to physical limitations, however, if exchange or similar agreements provide output to a purchaser where, but for the exchange agreements, it would not be possible for the seller to provide output to that purchaser.

(ii) *Contract terms relating to performance.* A contract to provide a specified amount of electricity from a system, but only when at least that amount of electricity is being generated by a particular unit, is allocated to that unit. For example, a

contract to buy 20 MW of system power with a right to take up to 40 percent of the actual output of a specific 50 MW facility whenever total system output is insufficient to meet all of the seller's obligations generally is allocated to the specific facility rather than to the system.

(iii) *Common plan of financing.* A contract entered into as part of a common plan of financing for a facility generally is allocated to the facility if debt service for the issue of bonds is reasonably expected to be paid, directly or indirectly, from payments substantially certain to be made under the contract (disregarding default, insolvency, or other similar circumstances).

(iv) *Pricing method.* Pricing based on the capital and generating costs of a particular turbine tends to indicate that output under the contract is properly allocated to that turbine.

(3) *Transmission contracts.* Whether use under an output contract for transmission is allocated to a particular facility or to a transmission network is based on all the facts and circumstances, in a manner similar to paragraphs (g)(1) and (2) of this section. In general, the method used to determine payments under a contract is a more significant contract term for this purpose than nominal contract path. In general, if reasonable and consistently applied, the determination of use of transmission facilities under an output contract may be based on a method used by third parties, such as reliability councils.

(4) *Allocation of payments.* Payments for output provided by an output facility financed with two or more sources of funding are generally allocated under the rules in §1.141-4(c).

(h) *Examples.* The following examples illustrate the application of this section:

Example 1. Joint ownership. Z, an investor-owned electric utility, and City H agree to construct an electric generating facility of a size sufficient to take advantage of the economies of scale. H will issue \$50 million of its 25-year bonds, and Z will use \$100 million of its funds for construction of a facility they will jointly own as tenants in common. Each of the participants will share in the ownership, output, and operating expenses of the facility in proportion to its contribution to the cost of the facility, that is, one-third by H and two-thirds by Z. H's bonds will be secured by H's ownership interest in the facility and by revenues to be derived from its share of the annual output of the facility. H will need only 50 percent of its share of the annual output of the facility during the first 20 years of opera-

tions. It agrees to sell 10 percent of its share of the annual output to Z for a period of 20 years pursuant to a contract under which Z agrees to take that power if available. The facility will begin operation, and Z will begin to receive power, 4 years after the H bonds are issued. The measurement period for the property financed by the issue is 21 years. H also will sell the remaining 40 percent of its share of the annual output to numerous other private utilities under contracts of 90 days or less entered into under a prevailing rate schedule, including demand charges. No contracts will be executed obligating any person other than Z to purchase any specified amount of the power for any specified period of time. No person (other than Z) will make payments substantially certain to be made (disregarding default, insolvency, or other similar circumstances) under paragraph (c)(2) of this section that will result in a transfer of substantial burdens of paying debt service on bonds used directly or indirectly to provide H's share of the facilities. The bonds are not private activity bonds, because H's one-third interest in the facility is not treated as used by the other owners of the facility. Although 10 percent of H's share of the annual output of the facility will be used in the trade or business of Z, a non-governmental person, under the rule in paragraph (c) of this section, that portion constitutes not more than 10 percent of the available output of H's ownership interest in the facility.

Example 2. Requirements contract treated as take contract. (i) City J issues 20-year bonds to acquire an electric generating facility having a reasonably expected economic life substantially greater than 20 years and a nameplate capacity of 100 MW. The available output of the facility under paragraphs (b)(1) of this section is approximately 17,520,000 MWh. On the issue date, J enters into a contract with T, an investor-owned utility, to provide T with all of its power requirements for a period of 10 years, commencing on the issue date. J reasonably expects that T will actually purchase an average of 20 MW over the 10-year period. Based on all of the facts and circumstances, including the size, diversity, and composition of T's customer base, J reasonably expects that it is substantially certain (disregarding default, insolvency, or other similar circumstances) that T will actually purchase only an average of 16 MW over the 10-year period. The contract is a requirements contract that must be taken into account under the private business tests pursuant to paragraph (c)(4) of this section because it provides T with substantial benefits of ownership (rights to capacity) and obligates T with substantial burdens of making payments that the issuer reasonably expects are substantially certain.

(ii) J is required to reserve for T's use 40 MW of capacity in accordance with prudent reliability standards. Under paragraph (d) of this section, the amount of private business use under this contract, therefore, is approximately 20 percent (40 MW X 24 hours X 365 days X 10 years, or 3,504,000 MWh) of the available output. Accordingly, the issue meets the private business use test. J reasonably expects that the amount to be paid for an average of 16 MW of power (less the operation and maintenance costs directly attributable to generating that 16 MW of power), will be more than 10 percent of debt service on the issue on a present-value basis. The payment for 16 MW of power is an amount that J reasonably expects is substantially certain to be made under

paragraph (c)(2) of this section. Accordingly, the issue meets the private security or payment test because J reasonably expects that it is substantially certain that payment of more than 10 percent of the debt service will be indirectly derived from payments by T. The bonds are private activity bonds under paragraph (c) of this section. Further, if 20 percent of the sale proceeds of the issue is greater than \$15 million and the issue meets the private security or payment test with respect to the \$15 million output limitation, the bonds are also private activity bonds under section 141(b)(4). See §1.141–8T.

Example 3. Allocation of existing contracts to new facilities. Power Authority K, a political subdivision created by the legislature in State X to own and operate certain power generating facilities, sells all of the power from its existing facilities to four private utility systems under contracts executed in 1999, under which the four systems are required to take or pay for specified portions of the total power output until the year 2029. Existing facilities supply all of the present needs of the four utility systems, but their future power requirements are expected to increase substantially beyond the capacity of K's current generating system. K issues 20-year bonds in 2004 to construct a large generating facility. As part of the financing plan for the bonds, a fifth private utility system contracts with K to take or pay for 15 percent of the available output of the new facility. The balance of the output of the new facility will be available for sale as required, but initially it is not anticipated that there will be any need for that power. The revenues from the contract with the fifth private utility system will be sufficient to pay less than 10 percent of the debt service on the bonds (determined on a present value basis). The balance, which will exceed 10 percent of the debt service on the bonds, will be paid from revenues derived from the contracts with the four systems initially from sale of power produced by the old facilities. The output contracts with all the private utilities are allocated to K's entire generating system. See paragraphs (g)(1) and (2) of this section. Thus, the bonds meet the private business use test because more than 10 percent of the proceeds will be used in the trade or business of a nongovernmental person. In addition, the bonds meet the private payment or security test because payment of more than 10 percent of the debt service, pursuant to underlying arrangements, will be derived from payments in respect of property used for a private business use.

Example 4. Allocation to displaced resource. Municipality MU, a political subdivision, purchases all of the electricity required to meet the needs of its customers (1,000 MW) from B, an investor-owned utility that operates its own electric generating facilities, under a 50-year take or pay contract. MU does not anticipate that it will require additional electric resources, and any new resources would produce electricity at a higher cost to MU than its cost under its contract with B. Nevertheless, B encourages MU to construct a new generating plant sufficient to meet MU's requirements. MU issues obligations to construct facilities that will produce 1,000 MW of electricity. MU, B, and I, another investor-owned utility, enter into an agreement under which MU assigns to I its rights under MU's take or pay contract with B. Under this arrangement, I will pay MU, and MU will continue to pay B, for the 1,000 MW. I's payments to MU will at

least equal the amounts required to pay debt service on MU's bonds. In addition, under paragraph (g)(1)(iii) of this section, the contract among MU, B, and I is entered into as part of a common plan of financing of the MU facilities. Under all the facts and circumstances, MU's assignment to I of its rights under the original take or pay contract is allocable to MU's new facilities under paragraph (g) of this section. Because I is a nongovernmental person, MU's bonds are private activity bonds.

Example 5. Transmission facilities transferred to independent system operator. (i) In 1998, the public utilities commission of State C adopts a plan for restructuring its electric power industry. The plan fosters competition by providing both wholesale and retail customers with non-discriminatory access to transmission facilities within the State. The plan provides that investor-owned utilities will transfer operating control over all of their transmission assets to an independent system operator (ISO), which is a nongovernmental person that will operate those combined assets as a single, state-wide system. Municipally-owned utilities are eligible for, but are not required to participate in, the open access system implemented by the ISO. The functions of the ISO include control of transmission access and pricing, scheduling transmission, control area operations, and settlements and billing. In addition, under certain circumstances the ISO may order the transmission owners to construct additional transmission facilities. The restructuring plan is approved by the FERC pursuant to sections 205 and 206 of the Federal Power Act.

(ii) In 1994 City D had issued bonds to finance improvements to its transmission system. In 1998, D transfers operating control of its transmission system to the ISO pursuant to the restructuring plan. At the same time, D chooses to apply the private activity bond regulations of §§1.141–0 through 1.141–15 to the 1994 bonds. The operation of the financed facilities by the ISO does not meet the exception for management contracts that do not give rise to private business use under §1.141–3(b)(4)(iii)(C) because it is not a contract solely for the operation of a facility under that exception. Under the special exception in paragraph (f)(5) of this section, however, the transfer of control is not treated as a deliberate action. Accordingly, the transfer of control does not cause the 1994 bonds to meet the private activity bond tests.

Example 6. Current refunding. The facts are the same as in Example 5 of this paragraph (h), and in addition D issues bonds in 1999 to currently refund the 1994 bonds. The weighted average maturity of the 1999 bonds is not greater than the remaining weighted average maturity of the 1994 bonds. D chooses to apply the private activity bond regulations of §§1.141–0 through 1.141–15 to the refunding bonds. In general, reasonable expectations must be separately tested on the date that refunding bonds are issued under §1.141–2(d). Under the special exception in paragraph (f)(5) of this section, however, the transfer of the financed facilities to the ISO need not be taken into account in applying the reasonable expectations test to the refunding bonds.

§1.141–8T \$15 million limitation for output facilities (temporary).

(a) *In general*—(1) *General rule.* Section 141(b)(4) provides a special private

activity bond limitation (the \$15 million output limitation) for issues 5 percent or more of the proceeds of which are to be used to finance output facilities (other than a facility for the furnishing of water). Under this rule, a bond is a private activity bond under the private business tests of section 141(b)(1) and (2) if the non-qualified amount with respect to output facilities financed by the proceeds of the issue exceeds \$15 million. The \$15 million output limitation applies in addition to the private business tests of section 141(b)(1) and (2). Under section 141(b)(4) and paragraph (a)(2) of this section, the \$15 million output limitation is reduced in certain cases. Specifically, an issue meets the test in section 141(b)(4) if both of the following tests are met:

(i) More than \$15 million of the proceeds of the issue to be used with respect to an output facility are to be used for a private business use. Investment proceeds are disregarded for this purpose if they are not allocated disproportionately to the private business use portion of the issue.

(ii) The payment of the principal of, or the interest on, more than \$15 million of the sales proceeds of the portion of the issue used with respect to an output facility is (under the terms of the issue or any underlying arrangement) directly or indirectly—

(A) Secured by any interest in an output facility used or to be used for a private business use (or payments in respect of such an output facility); or

(B) To be derived from payments (whether or not to the issuer) in respect of an output facility used or to be used for a private business use.

(2) *Reduction in \$15 million output limitation for outstanding issues*—(i) *General rule.* In determining whether an issue more than 5 percent of the proceeds of which are to be used with respect to an output facility consists of private activity bonds under the \$15 million output limitation, the \$15 million limitation on private business use and private security or payments is applied by taking into account the aggregate nonqualified amounts of any outstanding bonds of other issues 5 percent or more of the proceeds of which are or will be used with respect to that output facility or any other output facility that is part of the same project.

(ii) *Bonds taken into account.* For purposes of this paragraph (a)(2), in applying the \$15 million output limitation to an issue (the later issue), a tax-exempt bond of another issue (the earlier issue) is taken into account if—

(A) That bond is outstanding on the issue date of the later issue;

(B) That bond will not be redeemed within 90 days of the issue date of the later issue in connection with the refunding of that bond by the later issue; and

(C) More than 5 percent of the sale proceeds of the earlier issue financed an output facility that is part of the same project as the output facility that is financed by more than 5 percent of the sale proceeds of the later issue.

(3) *Benefits and burdens test applicable*—(i) *In general.* In applying the \$15 million output limitation, the benefits and burdens test of §1.141-7T applies, except that “\$15 million” is substituted for “10 percent”, or “5 percent” as appropriate.

(ii) *Earlier issues for the project.* If bonds of an earlier issue are outstanding and must be taken into account under paragraph (a)(2) of this section, the nonqualified amount for that earlier issue is multiplied by a fraction, the numerator of which is the adjusted issue price of the earlier issue as of the issue date of the later issue, and the denominator of which is the issue price of the earlier issue. Pre-issuance accrued interest as defined in §1.148-1(b) is disregarded for this purpose.

(b) *Definition of project*—(1) *General rule.* For purposes of paragraph (a)(2) of this section, *project* has the meaning provided in this paragraph. Facilities that are functionally related and subordinate to a project are treated as part of that same project. Facilities having different purposes or serving different customer bases are not ordinarily part of the same project. For example, the following are generally not part of the same project—

(i) Generation and transmission facilities;

(ii) Separate facilities designed to serve wholesale customers and retail customers; and

(iii) A peaking unit and a baseload unit.

(2) *Separate ownership.* Except as otherwise provided in this paragraph (b)(2), facilities that are not owned by the same person are not part of the same project. If different governmental persons act in

concert to finance a project, however (for example as participants in a joint powers authority), their interests are aggregated with respect to that project to determine whether the \$15 million output limitation is met. In the case of undivided ownership interests in a single output facility, property that is not owned by different persons is treated as separate projects only if the separate interests are financed—

(i) With bonds of different issuers; and

(ii) Without a principal purpose of avoiding the limitation in this section.

(3) *Generating property*—(i) *Property on same site.* In the case of generation and related facilities, *project* means property located at the same site.

(ii) *Special rule for generating units.* Separate generating units are not part of the same project, if one unit is reasonably expected, on the date of each issue that finances the project, to be placed in service more than 3 years before the other. Common facilities or property that will be functionally related to more than one generating unit must be allocated on a reasonable basis. If a generating unit already is constructed or is under construction (the first unit) and bonds are to be issued to finance an additional generating unit (the second unit), all costs for any common facilities paid or incurred before the earlier of the issue date of bonds to finance the second unit or the commencement of construction of the second unit are allocated to the first unit. At the time that bonds are issued to finance the second unit (or, if earlier, upon commencement of construction of that unit), any remaining costs of the common facilities may be allocated among the first and second units so that in the aggregate the allocation is reasonable.

(4) *Transmission.* In the case of transmission facilities, *project* means functionally related or contiguous property and property for ancillary services, such as property required to be included in open access transmission tariffs under rules of the FERC. Separate transmission facilities are not part of the same project if one facility is reasonably expected, on the issue date of each issue that finances the project, to be placed in service more than 2 years before the other.

(5) *Subsequent improvements*—(i) *In general.* An improvement to generating or transmission facilities that is not part of

the original design of those facilities (the original project) is not part of the same project as the original project if the construction, reconstruction, or acquisition of that improvement commences more than 3 years after the original project was placed in service and the bonds issued to finance that improvement are issued more than 3 years after the original project was placed in service.

(ii) *Special rule for transmission facilities.* An improvement to transmission facilities that is not part of the original design of that property is not part of the same project as the original project if the issuer did not reasonably expect the need to make that improvement when it commenced construction of the original project and the construction, reconstruction, or acquisition of that improvement is mandated by the federal government or a state regulatory authority to accommodate requests for wheeling.

(6) *Replacement property.* For purposes of this section, property that replaces existing property of an output facility is treated as part of the same project as the replaced property unless—

(i) The need to replace the property was not reasonably expected on the issue date or the need to replace the property occurred more than 3 years before the issuer reasonably expected (determined on the issue date of the bonds financing the property) that it would need to replace the property; and

(ii) The bonds that finance (and refinance) the replaced property have a weighted average maturity that is not greater than 120 percent of the reasonably expected economic life of the replaced property.

(c) *Example.* The application of the provisions of this section is illustrated by the following example:

Example. (i) Power Authority K, a political subdivision, intends to issue a single issue of tax-exempt bonds at par with a stated principal amount and sales proceeds of \$500 million to finance the acquisition of an electric generating facility. No portion of the facility will be used for a private business use, except that L, an investor-owned utility, will purchase 10 percent of the output of the facility under a take contract and will pay 10 percent of the debt service on the bonds. The nonqualified amount with respect to the bonds is \$50 million.

(ii) The maximum amount of tax-exempt bonds that may be issued for the acquisition of an interest in the facility in paragraph (i) of this *Example* is \$465 million (that is, \$450 million for the 90 percent

of the facility that is governmentally owned and used plus a nonqualified amount of \$15 million).

Par. 5. Section 1.141–15 is revised to read as follows:

§1.141–15 Effective dates.

(a) *Scope.* The effective dates of this section apply for purposes of §§1.141–1 through 1.141–6(a), 1.141–9 through 1.141–14, 1.145–1 through 1.145–2, 1.150–1(a)(3) and the definition of bond documents contained in §1.150–1(b).

(b) *Effective dates.* Except as otherwise provided in this section, §§1.141–1 through 1.141–6(a), 1.141–9 through 1.141–14, 1.145–1 through 1.145–2, 1.150–1(a)(3) and the definition of bond documents contained in §1.150–1(b) apply to bonds issued on or after May 16, 1997, that are subject to section 1301 of the Tax Reform Act of 1986 (100 Stat. 2602).

(c) *Refunding bonds.* Sections 1.141–1 through 1.141–6(a), 1.141–9 through 1.141–14, 1.145–1 through 1.145–2, 1.150–1(a)(3) and the definition of bond documents contained in §1.150–1(b) do not apply to any bonds issued on or after May 16, 1997, to refund a bond to which those sections do not apply unless—

(1) The weighted average maturity of the refunding bonds is longer than—

(i) The weighted average maturity of the refunded bonds; or

(ii) In the case of a short-term obligation that the issuer reasonably expects to refund with a long-term financing (such as a bond anticipation note), 120 percent of the weighted average reasonably expected economic life of the facilities financed; or

(2) A principal purpose for the issuance of the refunding bonds is to make one or more new conduit loans.

(d) *Permissive retroactive application of regulations.* Except as provided in paragraph (e) of this section, §§1.141–1 through 1.141–6(a), 1.141–9 through 1.141–14, 1.145–1 through 1.145–2, 1.150–1(a)(3) and the definition of bond documents contained in §1.150–1(b) may be applied in whole, but not in part, to actions taken before February 23, 1998 with respect to—

(1) Bonds that are outstanding on May 16, 1997, and subject to section 141; or

(2) Refunding bonds issued on or after May 16, 1997.

(e) *Permissive retroactive application of certain sections.* The following sec-

tions may each be applied to any bonds issued before May 16, 1997—

(1) Section 1.141–3(b)(4);

(2) Section 1.141–3(b)(6); and

(3) Section 1.141–12.

Par. 6. Section 1.141–15T is added to read as follows:

§1.141–15T Effective dates (temporary).

(a) through (e) [Reserved]. For guidance see §1.141–15.

(f) *Effective dates for certain regulations relating to output facilities—*(1) *General rule.* Except as otherwise provided in this section, §§ 1.141–7T and 1.141–8T apply to bonds issued on or after February 23, 1998 that are subject to section 1301 of the Tax Reform Act of 1986 (100 Stat. 2602).

(2) *Transition rule for requirements contracts.* Section 1.141–7T(c)(4) applies to output contracts entered into on or after February 23, 1998. An output contract is treated as entered into on or after that date if its term is extended, the parties to the contract change, or other material terms are amended on or after that date.

(g) *Refunding bonds in general.* Except as otherwise provided in paragraph (h) or (i) of this section, §§1.141–7T and 1.141–8T do not apply to bonds issued on or after February 23, 1998, to refund a bond to which the §§1.141–7T and 1.141–8T do not apply unless—

(1) The weighted average maturity of the refunding bonds is longer than—

(i) The weighted average maturity of the refunded bonds; or

(ii) In the case of a short-term financings (such as a bond anticipation note), 120 percent of the weighted average reasonably expected economic life of the facilities financed; or

(2) A principal purpose of the issuance of the refunding bonds is to make one or more new conduit loans.

(h) *Permissive retroactive application.* Except as provided in §1.141–15 (d) or (e) or paragraph (i) of this section, §§1.141–1 through 1.141–6, 1.141–7T through 1.141–8T, 1.141–9 through 1.141–14, 1.145–1 through 1.145–2, 1.150–1(a)(3) and the definition of bond documents contained in §1.150–1(b) may be applied in whole, but not in part to—

(1) Bonds that are outstanding on May 16, 1997, and subject to section 141; or

(2) Refunding bonds issued on or after May 16, 1997.

(i) *Permissive retroactive application of certain regulations pertaining to output contracts.* Section 1.141–7T(f)(4) and (5) may be applied to any bonds issued before February 23, 1998.

Par. 7. Section 1.142(f)(4)–1T is added to read as follows: *§1.142(f)(4)–1T Manner of making election to terminate tax-exempt bond financing (temporary).*

(a) *Overview.* Section 142(f)(4) permits a person engaged in the local furnishing of electric energy or gas (a local furnisher) that uses facilities financed with exempt facility bonds under section 142(a)(8) and that expands its service area in a manner inconsistent with the requirements of sections 142(a)(8) and 142(f) to make an election to ensure that those bonds will continue to be treated as exempt facility bonds. The election must meet the requirements of paragraphs (b) and (c) of this section.

(b) *Time for making election—*(1) *In general.* An election under section 142(f)(4)(B) must be filed with the Internal Revenue Service on or before 90 days after the later of—

(i) The date of the service area expansion that causes bonds to cease to meet the requirements of sections 142(a)(8) and 142(f); or

(ii) February 23, 1998.

(2) *Date of service area expansion.* For the purposes of this section, the date of the service area expansion is the first date on which the local furnisher is authorized to collect revenue for the provision of service in the expanded area.

(c) *Manner of making election.* An election under section 142(f)(4)(B) must be captioned “ELECTION TO TERMINATE TAX-EXEMPT BOND FINANCING”, must be signed under penalties of perjury by a person who has authority to sign on behalf of the local furnisher, and must contain the following information—

(1) The name of the local furnisher;

(2) The tax identification number of the local furnisher;

(3) The complete address of the local furnisher;

(4) The date of the service area expansion;

(5) Identification of each bond issue subject to the election, including the complete name of each issue, the tax identifi-

cation number of each issuer, the issue date of each issue, the issue price of each issue, the adjusted issue price of each issue as of the date of the election, the earliest date on which the bonds of each issue may be redeemed, and the principal amount of bonds of each issue to be redeemed on the earliest redemption date;

(6) A statement that the local furnisher making the election agrees to the conditions stated in section 142(f)(4)(B); and

(7) A statement that each issuer of the bonds subject to the election has received written notice of the election.

(d) *Effect on section 150(b).* Except as provided in paragraph (e) of this section, if a local furnisher files an election within the period specified in paragraph (b) of this section, section 150(b) does not apply to bonds identified in the election during and after that period.

(e) *Effect of failure to meet agreements.* If a local furnisher fails to meet any of the conditions stated in an election pursuant to paragraph (c)(6) of this section, the election is invalid.

(f) *Corresponding provisions of the Internal Revenue Code of 1954.* Section 103(b)(4)(E) of the Internal Revenue Code of 1954 set forth corresponding requirements for the exclusion from gross income of the interest on bonds issued for facilities for the local furnishing of electric energy or gas. For the purposes of this section any reference to sections 142(a)(8) and (f) of the Internal Revenue Code of 1986 includes a reference to the corresponding portion of section 103(b)(4)(E) of the Internal Revenue Code of 1954.

(g) *Effective dates.* Section 1.142(f)-(4)-1 applies to elections made on or after February 23, 1998.

Par. 8. Section 1.150-5T is added to read as follows:

§1.150-5T Filing notices and elections (temporary).

(a) *In general.* Notices and elections under the following sections must be filed with the Chief, Employee Plans and Exempt Organizations) of the appropriate key district office—

- (1) Section 1.141-12(d)(3); and
- (2) Section 1.142(f)(4)-1T.

(b) *Effective dates.* This section applies to notices and elections filed on or after February 23, 1998.

Michael P. Dolan,
Acting Commissioner of
Internal Revenue.

Approved December 23, 1997.

Jonathan Talisman,
Deputy Assistant Secretary of
the Treasury.

(Filed by the Office of the Federal Register on January 21, 1998, 8:45 a.m., and published in the issue of the Federal Register for January 22, 1998, 63 F.R. 3256)

Section 468A.—Special Rules for Nuclear Decommissioning Costs

26 CFR 1.468A-3: Ruling amount.

T.D. 8758

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1 and 602

Nuclear Decommissioning
Funds; Revised Schedules of
Ruling Amounts

AGENCY: Internal Revenue Service
(IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to requests for revised schedules of ruling amounts for nuclear decommissioning reserve funds. The regulations amend existing regulations to ease the burden on affected taxpayers by permitting electing taxpayers with qualifying interests in nuclear power plants to adjust their ruling amounts under a formula or method rather than by filing a request for a revised schedule of ruling amounts.

DATES: The final regulations are effective January 20, 1998.

FOR FURTHER INFORMATION CONTACT: Peter Friedman, (202) 622-3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been

reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under the control number 1545-1511. Responses to this collection of information are voluntary.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated average annual burden per recordkeeper is 5 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20024, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final regulations under section 468A of the Internal Revenue Code. Section 468A was added to the Internal Revenue Code by section 91(c) of the Tax Reform Act of 1984 (Public Law 98-369). Significant amendments were made to section 468A by section 1917 of the Energy Policy Act of 1992 (Public Law 102-486).

Section 468A(a) allows an electing taxpayer to deduct the amount of payments made by the taxpayer to a nuclear decommissioning reserve fund. Section 468A(b) limits the amount of these payments for any taxable year to the lesser of the ruling amount or the amount of decommissioning costs included in the taxpayer's cost of service for ratemaking purposes for that taxable year.

Section 468A(d) provides that no deduction shall be allowed unless the taxpayer requests, and receives, a schedule of ruling amounts from the Secretary. A ruling amount is, with respect to any taxable year, the amount determined by the Secretary as necessary to (1) fund that

portion of the nuclear decommissioning costs of the taxpayer with respect to the nuclear power plant which bears the same ratio to the total nuclear decommissioning costs with respect to the nuclear power plant as the period for which the nuclear decommissioning fund is in effect bears to the estimated useful life of such nuclear power plant; and (2) prevent any excessive funding of such costs or the funding of such costs at a rate more rapid than level funding, taking into account such discount rates as the Secretary deems appropriate. Section 468A(d)(3) provides that the Secretary shall, at least once during the useful life of the nuclear power plant (or more frequently, upon the request of the taxpayer), review and, if necessary, revise the schedule of ruling amounts.

Section 1.468A-3 sets forth the rules relating to the determination of ruling amounts. The regulations permit the use of a formula or method for determining a schedule of ruling amounts (in lieu of a schedule of ruling amounts specifying a dollar amount for each taxable year), but only if the public utility commission establishing or approving the amount of decommissioning costs to be included in cost of service for ratemaking does not estimate the cost of decommissioning in future dollars.

The regulations contain provisions for the review and revision of schedules of ruling amounts and set forth circumstances under which a taxpayer must request a revision to its schedule of ruling amounts. In general, a schedule of ruling amounts must be reviewed at 10 year intervals. If the schedule is determined under a formula or method, however, the period between reviews may not exceed 5 years.

The regulations provide that a taxpayer may request an elective review of its schedule of ruling amounts. A taxpayer seeking to maximize its deductions under section 468A generally needs to request an elective review of its schedule of ruling amounts each time a public utility commission changes previously established amounts of decommissioning costs. A notice of proposed rulemaking (REG-09828-96) relating to these rules was published in the Federal Register on December 23, 1996 (61 F.R. 67510). The notice proposes to amend §1.468A-3(a)(4) by eliminating the restriction on the use of a for-

mula or method for determining a schedule of ruling amounts and to revise the mandatory review requirements.

Written comments were received in response to the notice of proposed rulemaking, and a public hearing was held on May 13, 1997. After considering the written comments and the statements made at the public hearing, the proposed rules are adopted as modified by this Treasury Decision.

Explanation of Provisions

The final regulations provide that a taxpayer may request approval of a formula or method for determining a schedule of ruling amounts (rather than a schedule specifying a dollar amount for each taxable year) that is consistent with the principles and provisions of the rules relating to the determination of ruling amounts.

The final regulations ease the filing burden on taxpayers by permitting them to adjust their ruling amounts under a formula or method (rather than by filing a request for a revised schedule of ruling amounts). Thus, a taxpayer may maximize its deductions under section 468A without requesting a revised schedule of ruling amounts each time a public utility commission changes the amount of decommissioning costs included in the taxpayer's cost of service if, under the taxpayer's formula or method, the commission's action results in a corresponding change in ruling amounts. The commentators all agreed with the expanded availability of ruling amounts based on formulas or methods.

In addition, the final regulations modify the mandatory review provisions applicable to schedules of ruling amounts determined under a formula or method. The proposed regulations eliminate the rule requiring review of those schedules after 5 years but make those schedules subject to the general rule requiring review at 10 year intervals. In addition, the proposed regulations require taxpayers to request a revised schedule of ruling amounts if, beginning with the second taxable year during which the most recently issued formula or method is in effect, the ruling amount for a taxable year (1) differs by more than 25 percent from the ruling amount for any preceding taxable year during which such formula or method was in effect; or (2) differs by

more than 10 percent from the ruling amount for the immediately preceding taxable year. The commentators generally favored either a retention of the 5 year review period without limits on differences in ruling amounts or an increase in the percentage by which ruling amounts are permitted to differ. In response to these suggestions, the final regulations retain the 5 year review requirement, increase the overall percentage by which ruling amounts may differ, and eliminate the 10 percent limitation on changes from one year to the next.

Some commentators suggested that all elements of a formula should be permitted to be variable. Nothing in the proposed regulations was meant to suggest otherwise. In order to afford different taxpayers maximum flexibility in using a formula, the regulations do not specify which elements must be fixed and which must be variable. Instead, the formula, itself, will determine whether an element is fixed or variable. A fixed element is one that is assumed to retain the same value regardless of action by the applicable public utility commission.

Some commentators suggested that a taxpayer that recently received a schedule of ruling amounts should be permitted to vary this schedule using a formula or method that has not been approved by the Service. This suggestion is inconsistent with the Service's obligation to issue and review schedules of ruling amounts and is not adopted.

Several commentators requested that the existing user fee for obtaining a schedule of ruling amounts under section 468A is excessive and should be waived or reduced. Because this subject is not within the scope of this regulations project, it is not addressed in the final regulations.

Finally, some commentators suggested that the regulations should address the situation where a taxpayer, based on a good faith but erroneous calculation of the percentage limitations, fails to comply with the mandatory review provisions. Partly in response to this suggestion, the percentage limitation has been simplified.

Effective date

These regulations are applicable for requests for schedules of ruling amounts made on or after January 20, 1998.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in the regulation will not have a significant impact on a substantial number of small entities. This certification is based on the fact that taxpayers with qualifying interests in a nuclear power plant are generally large entities. Thus, because the regulation applies only to these taxpayers and does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Peter Friedman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.468A-2 is amended as follows:

1. The text of paragraph (f)(3) following the heading is designated as paragraph (f)(3)(i).

2. Paragraph (f)(3)(ii) is added.

The addition reads as follows:

§1.468A-2 Treatment of electing taxpayer.

* * * * *

(f) * * *

(3) * * * (i) * * *

(ii) The requirement of this paragraph (f)(3) does not apply if the taxpayer determines its schedule of ruling amounts under a formula or method obtained under §1.468A-3(a)(4) and the cost of service amount is a variable element of that formula or method.

* * * * *

Par. 3. Section 1.468A-3 is amended as follows:

1. Paragraph (a)(4) is revised.

2. Paragraph (e)(5) is added.

3. Paragraphs (i)(1)(ii)(A), (i)(1)(iii)(A)(3), and (i)(1)(iii)(B) are revised.

4. Paragraph (i)(1)(iii)(C) is added.

The revisions and additions read as follows:

§1.468A-3 Ruling amount.

(a) * * *

(4) The Internal Revenue Service will approve, at the request of the taxpayer, a formula or method for determining a schedule of ruling amounts (rather than a schedule specifying a dollar amount for each taxable year) that is consistent with the principles and provisions of this section. See paragraph (i)(1)(ii) of this section for a special rule relating to the mandatory review of ruling amounts that are determined pursuant to a formula or method.

* * * * *

(e) * * *

(5) A formula or method obtained under paragraph (a)(4) of this section may provide for changes in an estimated date described in paragraph (e)(1) or (2) of this section to reflect changes in the ratemaking assumptions used to determine rates (whether interim or final) that are established or approved by the applicable public utility commission after the filing of the request for approval of a formula or method.

* * * * *

(i) * * *

(1) * * *

(ii)(A) Any taxpayer that has obtained a formula or method for determining a schedule of ruling amounts for any taxable year under paragraph (a)(4) of this section must file a request for a revised

schedule on or before the earlier of the deemed payment deadline for the fifth taxable year that begins after its taxable year in which the most recent formula or method was approved or the deemed payment deadline for the first taxable year that begins after a taxable year in which there is a substantial variation in the ruling amount determined under the most recent formula or method. There is a substantial variation in the ruling amount determined under the formula or method in effect for a taxable year if the ruling amount for the year and the ruling amount for any earlier year since the most recent formula or method was approved differ by more than 50 percent of the smaller amount.

* * * * *

(iii) * * *

(A) * * *

(3) Reduces the amount of decommissioning costs to be included in cost of service for any taxable year;

(B) The taxpayer's most recent request for a schedule of ruling amounts did not provide notice to the Internal Revenue Service of such action by the public utility commission; and

(C) In the case of a taxpayer that determines its schedule of ruling amounts under a formula or method obtained under paragraph (a)(4) of this section, the item increased, adjusted, or reduced is a fixed (rather than a variable) element of that formula or method.

* * * * *

Par. 4. Section 1.468A-8 is amended by adding paragraph (b)(12) to read as follows:

§1.468A-8 Effective date and transitional rules.

* * * * *

(b) * * *

(12) *Use of formula or method.* Section 1.468A-2(f)(3)(ii) and §1.468A-3(a)(4) (to the extent it permits a formula or method when the applicable public utility commission estimates the cost of decommissioning in future dollars), (e)(5), (i)(1)(ii)(A) (to the extent it requires the taxpayer to file a request for a revised schedule because of a substantial variation in ruling amounts), and (i)(1)(iii)(C) apply only to requests for a

formula or method submitted on or after January 20, 1998, and to formulas and methods obtained in response to those requests.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. In §602.101(c), the entry for 1.468A-3 in the table is revised to read as follows:

§602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified or described	Current OMB control No.
* * * * *	
1.468A-3	1545-1269 1545-1378 1545-1511
* * * * *	

Michael P. Dolan,
Deputy Commissioner of
Internal Revenue.

Approved January 9, 1998.

Donald C. Lubick,
Acting Assistant Secretary of
the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on January 16, 1998, 8:45 a.m., and published in the issue of the Federal Register for January 20, 1998, 63 F.R. 2892)

Section 472.—Last-in, First-out Inventories

26 CFR 1.472-1: Last-in, first-out inventories.

LIFO; price indexes; department stores. The January 1998 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, January 31, 1998.

Rev. Rul. 98-16

The following Department Store Inventory Price Indexes for January 1998 were issued by the Bureau of Labor Statistics. The indexes are accepted by the Internal

Revenue Service, under § 1.472-1(k) of the Income Tax Regulations and Rev. Proc. 86-46, 1986-2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory methods for tax years ended on, or with reference to, January 31, 1998.

The Department Store Inventory Price Indexes are prepared on a national basis and include (a) 23 major groups of departments, (b) three special combinations of the major groups - soft goods, durable goods, and miscellaneous goods, and (c) a store total, which covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS (January 1941 = 100, unless otherwise noted)

Groups	Jan. 1997	Jan. 1998	Percent Change from Jan. 1997 to Jan. 1998 ¹
1. Piece Goods	536.5	536.7	0.0
2. Domestics and Draperies	648.0	627.9	-3.1
3. Women's and Children's Shoes	636.8	656.3	3.1
4. Men's Shoes	895.6	890.5	-0.6
5. Infants' Wear	622.7	619.0	-0.6
6. Women's Underwear	522.0	558.3	7.0
7. Women's Hosiery	291.3	304.6	4.6
8. Women's and Girls' Accessories	539.6	544.1	0.8
9. Women's Outerwear and Girls' Wear	404.3	395.6	-2.2
10. Men's Clothing	614.3	614.6	0.0
11. Men's Furnishings	580.0	584.2	0.7
12. Boys' Clothing and Furnishings	478.5	504.4	5.4
13. Jewelry	993.2	981.2	-1.2
14. Notions	773.4	803.3	3.9
15. Toilet Articles and Drugs	906.5	929.7	2.6
16. Furniture and Bedding	658.4	662.8	0.7
17. Floor Coverings	579.1	583.9	0.8
18. Housewares	818.0	811.8	-0.8
19. Major Appliances	246.8	241.8	-2.0

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE
INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS—Continued
(January 1941 = 100, unless otherwise noted)

Groups	Jan. 1997	Jan. 1998	Percent Change from Jan. 1997 to Jan. 1998 ¹
20. Radio and Television	78.4	73.5	-6.3
21. Recreation and Education ²	111.7	108.3	-3.0
22. Home Improvements ²	132.9	134.0	0.8
23. Auto Accessories ²	107.6	107.8	0.2
Groups 1 – 15: Soft Goods	592.0	593.1	0.2
Groups 16 – 20: Durable Goods	469.9	461.9	-1.7
Groups 21 – 23: Misc. Goods ²	113.6	111.5	-1.8
Store Total ³	550.0	547.5	-0.5

¹Absence of a minus sign before percentage change in this column signifies price increase.

²Indexes on a January 1986=100 base.

³The store total index covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

DRAFTING INFORMATION

The principal author of this revenue ruling is Stan Michaels of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Michaels on (202) 622-4970 (not a toll-free call).

Section 905.—Applicable Rules

26 CFR 1.905-2: *Conditions of allowance of credit.*

T.D. 8759

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Filing Requirements for Returns
Claiming the Foreign Tax Credit

AGENCY: Internal Revenue Service
(IRS), Treasury.

ACTION: Final Regulation.

SUMMARY: This document contains a final regulation relating to the substantiation requirements for taxpayers claiming foreign tax credits. The regulation is necessary to provide guidance to U.S. taxpayers who claim foreign tax credits.

DATES: *Effective date:* This regulation is effective January 27, 1998.

Applicability dates: This regulation is applicable for tax returns whose original due date falls on or after January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Joan Thomsen, (202) 622-3850 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On January 13, 1997, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG-208288-90 [1997-1 C.B. 722]) at 62 F.R. 1700, relating to the filing requirements for returns claiming the foreign tax credit (the proposed regulation).

Written comments responding to the proposed regulation were received. A public hearing was requested and scheduled but was later canceled when the one requester withdrew the request to testify. After consideration of all of the written comments, the proposed regulation under section 905(b) is adopted as revised by this Treasury Decision.

Summary of Comments and Final Regulations

The commenters argued that the interim credit notion incorporated in the proposed regulations from *Continental Illinois*, T.C. Memo 1991-66, 61 T.C.M. (CCH) 1916 (1991), *aff'd in part and rev'd in part*, 998 F.2d 513, 516-17 (7th

Cir. 1993), was misapplied and that the proposed amendment to §1.905-2(b)(3) denied district directors the flexibility to find compliance with section 905(b) unless the taxpayer produces receipts (or other direct evidence of payment) in order to prove that the taxes actually were paid to the foreign government. They argued that, even if the district director should be able to require such proof in cases such as *Continental Illinois*, district directors must have the flexibility to accept lesser proof. They argued that a portfolio holder of publicly-traded foreign securities, for example, will not be able to obtain proof in the form of receipts evidencing that the issuer of the securities actually paid the withheld taxes to the foreign government.

The comment letters are correct that the regulations historically have allowed the district director flexibility to determine that section 905(b) is satisfied without the production of tax receipts evidencing that the tax has been paid to the foreign government. Treasury and the IRS did not intend that the amendment to §1.905-2(b)(3), as proposed, deny the district director the flexibility to accept secondary evidence of the foreign tax payment where it has been established to the satisfaction of the district director that it is impossible to furnish a receipt for such foreign tax payment. The amendment was merely intended to clarify that proof of the act of withholding through secondary evidence is not, per se, equivalent to proof

of payment of the foreign tax. Treasury and the IRS have now concluded, however, that such clarification is not necessary. *Continental Illinois v. Commissioner, supra*.

Therefore, in response to comments, the proposed regulation is finalized without its proposed amendment to §1.905-2(b)(3). Thus, the final regulations are identical to the final regulations currently in effect, except §1.905-2(a)(2) no longer requires a foreign receipt or return to be attached to a Form 1116 or Form 1118.

Treasury and the IRS will continue to review the foreign tax credit substantiation rules to assure that they are functioning adequately. For example, Treasury and the IRS are concerned that U.S. holders of foreign securities, including American Depositary Receipts (ADRs), may be claiming foreign tax credits in situations where an intermediary in the chain of ownership between the holder of a foreign security or an ADR and the issuer of the security (or the security underlying the ADR) has taken actions inconsistent with the ownership of the underlying security by the person claiming the credit, such as a disposition of such security. One approach to address this issue would involve modifying the substantiation, documentation and reporting rules with respect to payments on such securities and taxes withheld therefrom. For example, in order for a U.S. owner to be entitled to a credit for foreign taxes imposed on income with respect to a security, financial intermediaries (including custodians) could be required to substantiate that they have not taken any action inconsistent with beneficial ownership of the relevant security by such U.S. owner.

It should be noted that portfolio investors are not necessarily entitled to foreign tax credits for the full amount indicated on the Form 1099 as foreign taxes paid. Portfolio investors are only entitled to a foreign tax credit for the amount of tax that is legally owed, which may not be the same as the amount withheld. If, for example, a portfolio investor is entitled to a refund of foreign tax withheld because of a reduced treaty withholding rate, the investor is only entitled to a foreign tax credit for the reduced amount, whether or not the investor files a refund claim with the foreign tax authorities. The IRS has made changes to the Form 1116 Instructions and Publication 514 to clarify this

point and intends to make similar changes to the Form 1118 Instructions.

Explanation of Provisions

§§1.905-2(a)(1), 1.905-2(b)(1),(2), and (3), and 1.905-2(c)

Sections 1.905-2(a)(1), 1.905-2(b)(1), (2) and (3), and 1.905-2(c) are unchanged from the current final regulations.

§1.905-2(a)(2)

Under former §1.905-2(a)(2), taxpayers generally were required to attach to their income tax returns either (1) the receipt for the foreign tax payment or (2) a foreign tax return for accrued foreign taxes. Section 1.905-2(a)(2) removes the requirement that the documentation be attached to the income tax return. The regulation now provides that such evidence of payment of foreign taxes must be presented to the district director upon request.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Joan Thomsen of the Office of the Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.905-2 is amended by revising the second through fourth sentences in paragraph (a)(2) to read as follows:

§1.905-2 Conditions of allowance of credit.

(a) * * *

(2) * * * Except where it is established to the satisfaction of the district director that it is impossible for the taxpayer to furnish such evidence, the taxpayer must provide upon request the receipt for each such tax payment if credit is sought for taxes already paid or the return on which each such accrued tax was based if credit is sought for taxes accrued. The receipt or return must be either the original, a duplicate original, or a duly certified or authenticated copy. The preceding two sentences are effective for returns whose original due date falls on or after January 1, 1988. * * *

* * * * *

Michael P. Dolan,
Deputy Commissioner of
Internal Revenue.

Approved January 13, 1998.

Donald C. Lubick,
Acting Assistant Secretary of
the Treasury.

(Filed by the Office of the Federal Register on January 26, 1998, 8:45 a.m., and published in the issue of the Federal Register for January 27, 1998, 63 F.R. 3812)

Section 6621.—Determination of Interest Rate

26 CFR 301.6621-1: Interest rate.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning April 1, 1998, will be 7 percent for overpayments, 8 percent for underpayments, and 10 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 is 5.5 percent.

Section 6621 of the Internal Revenue Code establishes different rates for interest on tax overpayments and interest on tax underpayments. Under § 6621(a)(1), the overpayment rate is the sum of the federal short-term rate plus 2 percentage points, except the rate for the portion of a corporate overpayment of tax exceeding \$10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point for interest computations made after December 31, 1994. Under § 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under § 6601 on any large corporate underpayment, the underpayment rate under § 6621(a)(2) is determined by substituting "5 percentage points" for "3 percentage points." See § 6621(c) and § 301.6621-3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable date. Section 6621(c) and § 301.6621-3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter.

Section 6621(b)(2)(A) provides that the federal short-term rate determined under

§ 6621(b)(1) for any month applies during the first calendar quarter beginning after such month.

Section 6621(b)(2)(B) provides that in determining the addition to tax under § 6654 for failure to pay estimated tax for any taxable year, the federal short-term rate that applies during the third month following such taxable year also applies during the first 15 days of the fourth month following such taxable year.

Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during such month by the Secretary in accordance with § 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

Notice 88-59, 1988-1 C.B. 546, announced that, in determining the quarterly interest rates to be used for overpayments and underpayments of tax under § 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with § 6621 which, pursuant to § 6622, is subject to daily compounding.

Rounded to the nearest full percent, the federal short-term rate based on daily compounding determined during the month of January 1998 is 5 percent. Accordingly, an overpayment rate of 7 percent and an underpayment rate of 8 percent are established for the calendar quarter beginning

April 1, 1998. The overpayment rate for the portion of a corporate overpayment exceeding \$10,000 for the calendar quarter beginning April 1, 1998, is 5.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning April 1, 1998, is 10 percent. These rates apply to amounts bearing interest during that calendar quarter.

Under § 6621(b)(2)(B), the 9 percent rate that applies to estimated tax underpayments for the first calendar quarter in 1998, as provided in Rev. Rul. 97-53, 1997-52 I.R.B. 13, also applies to such underpayments for the first 15 days in April 1998.

Interest factors for daily compound interest for annual rates of 5.5 percent, 7 percent, 8 percent, and 10 percent are published in Tables 16, 19, 21, and 25 of Rev. Proc. 95-17, 1995-1 C.B. 556, 570, 573, 575, and 579.

Annual interest rates to be compounded daily pursuant to § 6622 that apply for prior periods are set forth in the tables accompanying this revenue ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Raymond Bailey of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Bailey on (202) 622-6226 (not a toll-free call).

TABLE OF INTEREST RATES PERIODS BEFORE JUL. 1, 1975 - PERIODS ENDING DEC. 31, 1986 OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	DAILY RATE TABLE IN 1995-1 C.B.
Before Jul. 1, 1975	6%	Table 2, pg. 557
Jul. 1, 1975—Jan. 31, 1976	9%	Table 4, pg. 559
Feb. 1, 1976—Jan. 31, 1978	7%	Table 3, pg. 558
Feb. 1, 1978—Jan. 31, 1980	6%	Table 2, pg. 557
Feb. 1, 1980—Jan. 31, 1982	12%	Table 5, pg. 560
Feb. 1, 1982—Dec. 31, 1982	20%	Table 6, pg. 560
Jan. 1, 1983—Jun. 30, 1983	16%	Table 37, pg. 591
Jul. 1, 1983—Dec. 31, 1983	11%	Table 27, pg. 581
Jan. 1, 1984—Jun. 30, 1984	11%	Table 75, pg. 629
Jul. 1, 1984—Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985—Jun. 30, 1985	13%	Table 31, pg. 585
Jul. 1, 1985—Dec. 31, 1985	11%	Table 27, pg. 581
Jan. 1, 1986—Jun. 30, 1986	10%	Table 25, pg. 579
Jul. 1, 1986—Dec. 31, 1986	9%	Table 23, pg. 577

TABLE OF INTEREST RATES
FROM JAN. 1, 1987 - PRESENT

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE TABLE PG 1995-1 C.B.			RATE TABLE PG 1995-1 C.B.		
Jan. 1, 1987—Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987—Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987—Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987—Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988—Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988—Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988—Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988—Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989—Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989—Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989—Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989—Dec. 31, 1989	10%	25	579	11%	27	581
Jan. 1, 1990—Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990—Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990—Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990—Dec. 31, 1990	10%	25	579	11%	27	581
Jan. 1, 1991—Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991—Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991—Sep. 30, 1991	9%	23	577	10%	25	579
Oct. 1, 1991—Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992—Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992—Jun. 30, 1992	7%	67	621	8%	69	623
Jul. 1, 1992—Sep. 30, 1992	7%	67	621	8%	69	623
Oct. 1, 1992—Dec. 31, 1992	6%	65	619	7%	67	621
Jan. 1, 1993—Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993—Jun. 30, 1993	6%	17	571	7%	19	573
Jul. 1, 1993—Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993—Dec. 31, 1993	6%	17	571	7%	19	573
Jan. 1, 1994—Mar. 31, 1994	6%	17	571	7%	19	573
Apr. 1, 1994—Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994—Sep. 30, 1994	7%	19	573	8%	21	575
Oct. 1, 1994—Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995—Mar. 31, 1995	8%	21	575	9%	23	577
Apr. 1, 1995—Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995—Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995—Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996—Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996—Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996—Sep. 30, 1996	8%	69	623	9%	71	625
Oct. 1, 1996—Dec. 31, 1996	8%	69	623	9%	71	625
Jan. 1, 1997—Mar. 31, 1997	8%	21	575	9%	23	577
Apr. 1, 1997—Jun. 30, 1997	8%	21	575	9%	23	577
Jul. 1, 1997—Sep. 30, 1997	8%	21	575	9%	23	577
Oct. 1, 1997—Dec. 31, 1997	8%	21	575	9%	23	577
Jan. 1, 1998—Mar. 31, 1998	8%	21	575	9%	23	577
Apr. 1, 1998—Jun. 30, 1998	7%	19	573	8%	21	575

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991 - PRESENT

	RATE TABLE PG 1995-1 C.B.		
Jan. 1, 1991—Mar. 31, 1991	13%	31	585
Apr. 1, 1991—Jun. 30, 1991	12%	29	583
Jul. 1, 1991—Sep. 30, 1991	12%	29	583
Oct. 1, 1991—Dec. 31, 1991	12%	29	583
Jan. 1, 1992—Mar. 31, 1992	11%	75	629
Apr. 1, 1992—Jun. 30, 1992	10%	73	627
Jul. 1, 1992—Sep. 30, 1992	10%	73	627
Oct. 1, 1992—Dec. 31, 1992	9%	71	625
Jan. 1, 1993—Mar. 31, 1993	9%	23	577
Apr. 1, 1993—Jun. 30, 1993	9%	23	577
Jul. 1, 1993—Sep. 30, 1993	9%	23	577
Oct. 1, 1993—Dec. 31, 1993	9%	23	577
Jan. 1, 1994—Mar. 31, 1994	9%	23	577
Apr. 1, 1994—Jun. 30, 1994	9%	23	577
Jul. 1, 1994—Sep. 30, 1994	10%	25	579
Oct. 1, 1994—Dec. 31, 1994	11%	27	581
Jan. 1, 1995—Mar. 31, 1995	11%	27	581
Apr. 1, 1995—Jun. 30, 1995	12%	29	583
Jul. 1, 1995—Sep. 30, 1995	11%	27	581
Oct. 1, 1995—Dec. 31, 1995	11%	27	581
Jan. 1, 1996—Mar. 31, 1996	11%	75	629
Apr. 1, 1996—Jun. 30, 1996	10%	73	627
Jul. 1, 1996—Sep. 30, 1996	11%	75	629
Oct. 1, 1996—Dec. 31, 1996	11%	75	629
Jan. 1, 1997—Mar. 31, 1997	11%	27	581
Apr. 1, 1997—Jun. 30, 1997	11%	27	581
Jul. 1, 1997—Sep. 30, 1997	11%	27	581
Oct. 1, 1997—Dec. 31, 1997	11%	27	581
Jan. 1, 1998—Mar. 31, 1998	11%	27	581
Apr. 1, 1998—Jun. 30, 1998	10%	25	579

TABLE OF INTEREST RATES FOR CORPORATE
OVERPAYMENTS EXCEEDING \$10,000
FROM JANUARY 1, 1995 - PRESENT

	RATE TABLE PG 1995-1 C.B.		
Jan. 1, 1995—Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995—Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995—Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995—Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996—Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996—Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996—Sep. 30, 1996	6.5%	66	620
Oct. 1, 1996—Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997—Mar. 31, 1997	6.5%	18	572
Apr. 1, 1997—Jun. 30, 1997	6.5%	18	572
Jul. 1, 1997—Sep. 30, 1997	6.5%	18	572
Oct. 1, 1997—Dec. 31, 1997	6.5%	18	572
Jan. 1, 1998—Mar. 31, 1998	6.5%	18	572
Apr. 1, 1998—Jun. 30, 1998	5.5%	16	570

Part III. Administrative, Procedural, and Miscellaneous

Differential Earnings Rate for Mutual Life Insurance Companies

Notice 98-19

This notice publishes a tentative determination under § 809 of the Internal Revenue Code of the “differential earnings rate” for 1997 and the rate that is used to calculate the “recomputed differential earnings amount” for 1996. (The latter rate is referred to in this notice as the “recomputed differential earnings rate” for 1996.) These rates are used by mutual life insurance companies to calculate their federal income tax liability for taxable years beginning in 1997.

BACKGROUND

Section 809(a) provides that, in the case of any mutual life insurance company, the amount of the deduction allowable under § 808 for policyholder dividends is reduced (but not below zero) by the “differential earnings amount.” Any excess of the differential earnings amount over the amount of the deduction allowable under § 808 is taken into account as a reduction in the closing balance of reserves under subsections (a) and (b) of § 807. The “differential earnings amount” for any taxable year is the amount equal to the product of (a) the life insurance company’s average equity base for the taxable year multiplied by (b) the “differential earnings rate” for that taxable year. The “differential earnings rate” for the taxable year is the excess of (a) the “imputed earnings rate” for the taxable year over (b) the “average mutual earnings rate” for the second calendar year preceding the calendar year in which the taxable year begins. The “imputed earnings rate” for any taxable year is the amount that bears the same ratio to 16.5 percent as the “current stock earnings rate” for the taxable year bears to the “base period stock earnings rate.”

Section 809(f) provides that, in the case of any mutual life insurance company, if the “recomputed differential earnings amount” for any taxable year exceeds the differential earnings amount for that taxable year, the excess is included in life in-

surance gross income for the succeeding taxable year. If the differential earnings amount for any taxable year exceeds the recomputed differential earnings amount for that taxable year, the excess is allowed as a life insurance deduction for the succeeding taxable year. The “recomputed differential earnings amount” for any taxable year is an amount calculated in the same manner as the differential earnings amount for that taxable year, except that the average mutual earnings rate for the calendar year in which the taxable year begins is substituted for the average mutual earnings rate for the second calendar year preceding the calendar year in which the taxable year begins.

The stock earnings rates and mutual earnings rates taken into account under § 809 generally are determined by dividing statement gain from operations by the average equity base. For this purpose, the term “statement gain from operations” means “the net gain or loss from operations required to be set forth in the annual statement, determined without regard to Federal income taxes, and ... properly adjusted for realized capital gains and losses. . . .” See § 809(g)(1). The term “equity base” is defined as an amount determined in the manner prescribed by regulations equal to surplus and capital increased by the amount of nonadmitted financial assets, the excess of statutory reserves over the amount of tax reserves, the sum of certain other reserves, and 50 percent of any policyholder dividends (or other similar liability) payable in the following taxable year. See § 809(b)(2), (3), (4), (5) and (6). Section 1.809-10 of the Income Tax Regulations provides that the equity base includes both the asset valuation reserve and the interest maintenance reserve for taxable years ending after December 31, 1991.

Section 1.809-9(a) of the regulations provides that neither the differential earnings rate under § 809(c) nor the recomputed differential earnings rate that is used in computing the recomputed differential earnings amount under § 809(f)(3) may be less than zero.

As described above, the differential earnings rate for 1997 and the recomputed differential earnings rate for 1996 affect the income and deductions reported by

mutual life insurance companies on their federal income tax returns for the 1997 taxable year.

Data necessary to determine the tentative differential earnings rate for 1997 and the tentative recomputed differential earnings rate for 1996 have been compiled from returns filed by mutual life insurance companies and certain stock life insurance companies. The Internal Revenue Service is currently examining these returns. This examination will not be completed before the March 16, 1998, due date for filing 1997 calendar year returns.

NOTICE OF TENTATIVE RATES

This notice publishes a tentative determination of the differential earnings rate for 1997 and of the recomputed differential earnings rate for 1996. This notice also publishes a tentative determination of the rates on which the calculation of the differential earnings rate for 1997 and the recomputed differential earnings rate for 1996 are based. The final determination of these rates is expected to be published before September 1, 1998.

The tentative determination of the differential earnings rate for 1997 and the tentative determination of the recomputed differential earnings rate for 1996 that are published in this notice should be used by mutual life insurance companies to calculate the amount of tax liability for taxable years beginning in 1997 (in the case of companies that file returns before publication of the final determination of these rates) or to calculate the amount of estimated unpaid tax liability for taxable years beginning in 1997 (in the case of companies that are allowed an extension of time to file returns). Companies that file returns before publication of the final determination of these rates should file amended returns after the final determination of these rates is published. If there is a failure to pay tax for a taxable year beginning in 1997 and the failure is attributable to a difference between (a) the tentative determination of the differential earnings rate for 1997 and recomputed differential earnings rate for 1996 and (b) the final determination of these rates, then any such failure through September 15, 1998, will be treated as due to reasonable

cause and will not give rise to any addition to tax under § 6651.

The tentative determination of the rates is set forth in Table 1.

Notice 98-19 Table 1	
Tentative Determination of Rates To Be Used for Taxable Years Beginning in 1997	
Differential earnings rate for 1997	. . 0
Recomputed differential earnings rate for 19960
Imputed earnings rate for 199615.669
Imputed earnings rate for 199713.813
Base period stock earnings rate18.221
Current stock earnings rate for 199715.254
Stock earnings rate for 1994	...11.437
Stock earnings rate for 1995	...17.087
Stock earnings rate for 1996	...17.238
Average mutual earnings rate for 199516.477
Average mutual earnings rate for 199616.225

Capital Gains and Charitable Remainder Trusts

Notice 98-20

This notice provides guidance on the ordering and taxation of distributions under § 664(b)(2) of the Internal Revenue Code from a charitable remainder trust (CRT) in light of the changes made to § 1(h) by the Taxpayer Relief Act of 1997 (TRA 1997). Pub. L. 105-34, § 311, 111 Stat. 788, 831. Section § 1(h) provides that the Treasury may issue regulations to implement the provisions of § 1(h) for passthrough entities. The Treasury Department and the Internal Revenue Service plan to issue regulations incorporating the guidance contained in this notice.

BACKGROUND

Generally, a CRT is a trust that provides for a specified distribution at least annually over a specified period to one or more noncharitable recipients (a CRT distribution), with the remainder interest in the trust held irrevocably for a charitable organization.

TRA 1997 amended § 1(h) to provide for new capital gain tax rates for noncorporate taxpayers. Notice 97-59, 1997-45 I.R.B. 7, explains that a noncorporate taxpayer's long-term capital gains and losses are separated into three tax rate groups: (1) the 28-percent group, (2) the 25-percent group, and (3) the 20-percent group. The present notice uses these terms in explaining how a CRT characterizes its capital gain distribution for taxable years beginning on or after January 1, 1998. The definitions of net capital gain, net long-term capital gain or loss, and net short-term capital gain or loss were not changed by TRA 1997. Like Notice 97-59, this notice takes into account the pending retroactive legislative corrections. H.R. 2676, 105th Cong., § 605(d) (1997).

ADDITIONAL NETTING RULES

CRTs will be expected to follow the netting rules in Notice 97-59 when determining net short-term and net long-term capital gains. The rules in § 1.664-1(d)-(1)(i)(b)(2) and (3) of the Income Tax Regulations continue to apply in determining capital gains or losses carried forward to the succeeding taxable year.

GENERAL PRINCIPLES OF THE ORDERING RULE

Section 664(b) contains the ordering rule for determining the character of a CRT distribution in the hands of the recipient. The character of a CRT's income is determined at the time the income is realized by the trust. Under § 664(b), the following ordering rule applies for determining the character of a distribution in the hands of the recipient: (1) first, as ordinary income to the extent of the trust's ordinary income for the trust's taxable year and its undistributed ordinary income for prior years, (2) second, as capital gain to the extent of the trust's capital gain for the trust's taxable year and its undistributed capital gain for prior years, (3) third, as other income to the extent of the trust's other income for the trust's taxable year and its undistributed other income for prior years, and (4) fourth, as a distribution of trust corpus.

The underlying policy in the ordering rule of § 664(b) and the existing regulations thereunder is that a CRT distribution is deemed to consist first of income that is subject to the highest federal income tax

rate in effect at the time of the distribution and then of income that is subject to progressively lower (or no) federal income tax rates in effect at the time of distribution. The same policy applies in the regulations under § 664 when different income tax rates apply to different groups of income within a category of the items described in § 664(b), such as short-term and long-term capital gains. Therefore, income from a group that is subject to a higher federal income tax rate is deemed distributed before other income from a group, within the same category, that is subject to a lower federal income tax rate.

The following example illustrates how this principle applies to capital gain distributions after TRA 1997. Assume for the 1998 taxable year, a CRT has undistributed long-term capital gain in each of the three groups of long-term capital gain, i.e., the 28-percent group, the 25-percent group, and the 20-percent group, and also has undistributed short-term capital gain. To the extent capital gains are deemed distributed for the 1998 taxable year, the short-term capital gain is deemed distributed prior to any long-term capital gain. The long-term capital gain is deemed distributed in the following order: (1) the gain in the 28-percent group is deemed distributed prior to any other long-term capital gain; (2) the gain in the 25-percent group is deemed distributed prior to any gain in the 20-percent group; and (3) the gain in the 20-percent group is deemed distributed last of any long-term capital gain.

A trustee of a CRT will be required to report each group of long-term capital gain separately on the Form 5227, Split-Interest Trust Information Return. The trustee may use any reasonable method for determining the amount of each type of gain within a group that has been distributed when doing the required reporting or associated recordkeeping.

PRE-1997 LONG-TERM CAPITAL GAIN

As of January 1, 1997, many CRTs had undistributed long-term capital gains that the CRT properly took into account before January 1, 1997 (pre-1997 long-term capital gains). These pre-1997 long-term capital gains must be assigned to one of the three groups of long-term capital gains. Section 1(h) does not specifically assign pre-1997 long-term capital gains to

one group of long-term capital gain. However, § 1(h) gives the Treasury broad regulatory authority to implement the provisions of § 1(h) for passthrough entities.

Pre-1997 long-term capital gains were characterized by the CRT based on the definitions of short-term and long-term capital gains applicable at the time the CRT sold a capital asset. CRTs have never been required to segregate these gains based upon the tax rate or holding period in effect at the time the gains were realized by the CRT. Thus, the undistributed pre-1997 long-term capital gains reflect gains realized when various tax rates and holding periods were in effect. Treasury will exercise its regulatory authority to treat undistributed CRT pre-1997 long-term capital gains as falling within the 20-percent group.

1997 PRE-EFFECTIVE DATE LONG-TERM CAPITAL GAINS

Long-term capital gains properly taken into account from January 1, 1997, through May 6, 1997, are covered by the rules in § 1(h) regarding pre-effective date gains. Under § 1(h), for the taxable year that includes May 7, 1997, gains and losses properly taken into account by the CRT for the

portion of the taxable year before May 7, 1997, must be taken into account in determining long-term capital gain in the 28-percent group. Because the taxable year for CRTs is the calendar year, long-term capital gains properly taken into account by a CRT from January 1, 1997, through May 6, 1997, are treated as long-term capital gains in the 28-percent group.

EXAMPLE ILLUSTRATING ORDERING AND CHARACTER RULES

The following example illustrates how these rules will apply to the 1998 taxable year. At the end of the 1998 taxable year, CRT X has no current or undistributed ordinary income and has the following net short-term and long-term capital gains:

Net short-term capital gain \$ 5

Net long-term capital gain \$50

By tax rate group:

28-percent group gain – \$15

(\$12 of gain recognized from 1/1/97 through 5/6/97; and \$3 of gain recognized after 7/28/97 from an asset held for more than one year and less than 18 months)

25-percent group gain – \$ 5

20-percent group gain – \$30

(\$10 of gain recognized before 1/1/97)

X makes a CRT distribution of \$25 for the 1998 taxable year. The CRT distribution is deemed to have the following characteristics in the recipient's hands:

Short-term capital gain \$ 5

28-percent group gain \$15

25-percent group gain \$ 5

20-percent group gain \$ 0

The undistributed 20-percent group gain of \$30 is carried forward to 1999.

EFFECTIVE DATE

The proposed regulations when published will be effective for taxable years beginning on or after January 1, 1998. CRTs and their recipients, however, may rely on the rules in this notice for the 1997 taxable year.

DRAFTING INFORMATION

The principal authors of this notice are Mary Beth Collins and Jeff Erickson of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice contact Ms. Collins or Mr. Erickson on (202) 622-3070 (not a toll-free call).

26 CFR 601.602: Tax forms and instructions.

Rev. Proc. 98-26

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PART A. GENERAL

SEC. 1. PURPOSE

.01 The purpose of this revenue procedure is to update Rev. Proc. 92-80, 1992-2 C.B. 465, (IRS Pub. 1245), which outlines the requirements and conditions for submitting certain Forms W-4, Employee's Withholding Allowance Certificate, magnetically or electronically to the Internal Revenue Service (IRS), Martinsburg Computing Center (MCC).

.02 Revenue procedures are generally revised to reflect legislative and form changes. Comments concerning this revenue procedure or suggestions for making it more helpful can be addressed to Internal Revenue Service, Martinsburg Computing Center, P.O. Box 1359, Martinsburg, WV 25402, ATTN: IRBInformation Support Section.

.03 The following revenue procedures and publications provide more detailed filing procedures for certain information returns and can be obtained by contacting your local IRS office or by calling 1-800-829-3676:

- (a) "Instructions for Forms 1099, 1098, 5498, and W-2G" provides specific instructions on completing and submitting information returns to IRS.
- (b) Rev. Proc. 84-33, 1984-1 C.B. 502, regarding the optional method for agents to report and deposit backup withholding.
- (c) Publication 1179, Specifications for Paper Document Reporting and Paper Substitutes for Forms 1096, 1098, 1099 Series, 5498, and W-2G.
- (d) Publication 1220, Specifications for Filing Form 1098, 1099, 5498, and W-2G Magnetically or Electronically.
- (e) Publication 1239, Specifications for Filing Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips, on Magnetic Tape and 3 1/2- or 5 1/4-Inch Magnetic Diskettes.
- (f) Publication 1187, Specifications for Filing Form 1042S, Foreign Person's U.S. Source Income Subject to Withholding, Magnetically or Electronically
- (g) Publication 1527, IRP-BBS (Information Reporting Program Bulletin Board System).

.04 Refer to Part A, Sec. 10, for definitions of terms used in this publication.

SEC. 2. NATURE OF CHANGES

In this publication, major changes have been emphasized by using *italics*. This has been done to assist filers in identifying new information. Filers are still advised to read the publication in its entirety.

The changes are as follow:

.01 EDITORIAL CHANGES

- (a) The title of the publication has changed from "Specifications for Filing Form W-4, Employee's Withholding Allowance Certificate, on Magnetic Tape, and 5 1/4-, and 3 1/2-Inch Magnetic Diskettes" to "Specifications for Filing Form W-4, Employee's Withholding Allowance Certificate, Magnetically or Electronically." This revenue procedure now contains specifications for reporting electronically through the Information Reporting Program Bulletin Board System (IRP-BBS), and magnetically using AS400 compatible tape cartridges, 8mm, 4mm, and Quarter Inch Cartridges.
- (b) Under Part A, Sec. 3, "WHERE TO FILE AND HOW TO CONTACT THE IRS, MARTINSBURG COMPUTING CENTER", the ZIP code for the P O Box address was changed to 25402.
- (c) Telephone numbers for the Information Reporting Program Bulletin Board System (IRP-BBS) and IRS/MCC fax machine have changed. The IRP-BBS telephone number is now 304-264-7070. The IRS/MCC fax number is 304-264-5602.
- (d) Under Part B, Sec. 2, tape specifications, modifications have been made which simplify requirements. Please read carefully.
- (e) Part B, Sec. 7, Form W-4 record format, has been changed to Form W-4 record format and record layout. A record layout has been added at the end of the format specifications.

.02 PROGRAMMING CHANGES

- (a) Added Part B, Sec. 4, "Tape Cartridge Specifications"
- (b) Added Part B, Sec. 5, "8MM, 4MM, and QUARTER INCH CARTRIDGE Specifications"
- (c) Added Part B, Sec. 6, "Asynchronous (IRP-BBS) Electronic Filing Specifications"
- (d) Revised Part B, Sec. 7, "Form W-4 Record Format and Record Layout."
 - (1) Form W-4 Date field is expanded to 8 positions. The format will be YYYYMMDD, (e.g. 19981231).
 - (2) The date field was moved from positions 164-169 to positions 324-331. Field positions 164-169 will now be blank filled.
 - (3) Employer Zip Code has expanded from 5 positions to 9 positions. The field positions are now 310-318.
 - (4) Due to the change in the Employer Zip Code, the Transmitter Control Code has shifted 4 positions. The field positions are now 319-323.

SEC. 3. WHERE TO FILE AND HOW TO CONTACT THE IRS, MARTINSBURG COMPUTING CENTER

.01 All Forms W-4 filed magnetically or electronically are processed at IRS/MCC. Magnetic media containing Forms W-4 are to be sent to the following addresses:



If by Postal Service:

IRS-Martinsburg Computing Center
Information Reporting Program
P. O. Box 1359
Martinsburg, WV 25402-1359

or



If by truck or air freight:

IRS-Martinsburg Computing Center
Information Reporting Program
Route 9 and Needy Road
Martinsburg, WV 25401

 **Note: The ZIP Code has changed from 25401-1359 to 25402-1359 for the IRS P.O. Box addresses for Martinsburg, WV.**

.02 Publication 1245 and other IRS publications concerning magnetic/electronic filing of information returns are available through the IRP-BBS as “downloadable” files. Using IRP-BBS as a means of obtaining publications will provide faster access to this information. Additionally, publications will be available from IRP-BBS much earlier than the printed version. The IRP-BBS is operational 24 hours a day, 7 days a week. The telephone number is (304) 264-7070.

.03 Requests for paper forms and publications unrelated to magnetic media/electronic filing should be requested by calling the “Forms Only Number” listed in your local telephone directory or by calling the IRS toll-free number **1-800-TAX-FORM (1-800-829-3676)**.

.04 Questions pertaining to magnetic media/electronic filing of Forms W-2 **must** be directed to the Social Security Administration (SSA). Filers can call 1-800-SSA-1213 to obtain the phone number of the SSA Magnetic Media Coordinator for their area.

.05 *A taxpayer or authorized representative may request a copy of a tax return or a Form W-2 filed with a return by submitting Form 4506, Request for Copy or Transcript of Tax Form, to IRS. This form may be obtained by calling **1-800-TAX-FORM (1-800-829-3676)**.*

.06 *The IRS/MCC Call Site, located in Martinsburg, WV provides service to the payer/employer community (financial institutions, employers, and other transmitters of information returns). The IRS/MCC Call Site answers question concerning tax law and the magnetic/electronic filing of questionable Forms W-4 as well as information returns (Forms 1096, 1098, 1099, 5498, 5498-MSA, 8027, W-2G, W-3, and 1042S), inquiries dealing with backup withholding due to missing and incorrect taxpayer identification numbers and questions concerning paper filing of Forms W-2. Recipients of information returns (payees) should continue to contact 1-800-829-1040 or other numbers specified in the tax return instructions with any questions on how to report information returns.*

*The Call Site accepts calls from all areas of the country. The number to call is **304-263-8700** or Telecommunications Device for the Deaf (TDD) **304-267-3367**. These are toll calls. The Call Site is in operation throughout the year to handle the questions of payers, transmitters, and employers. Due to the high demand for assistance at the end of January and February, it is advisable to call as soon as possible to avoid these peak filing seasons.*

.07 Telephone inquiries may be made Monday through Friday between 8:30 a.m. and 4:30 p.m. Eastern time. The telephone numbers for magnetic media/electronic inquiries or electronic submissions are:



304-263-8700 - Call Site

304-264-7070 - IRP-BBS (Information Reporting Program Bulletin Board System)

304-267-3367 - TDD (Telecommunication Device for the Deaf)

304-264-5602 - Fax Machine

(These are not toll-free telephone numbers.)

TO OBTAIN FORMS & PUBLICATIONS, CALL:

1-800-TAX-FORM (1-800-829-3676)

SEC. 4. FILING REQUIREMENTS

.01 Employers are required to send to IRS quarterly, copies of all Forms W-4 received during the quarter from employees still employed at the end of the quarter who claim the following:

- (a) More than 10 withholding allowances, or
- (b) Exempt status and are expected to earn more than \$200 a week.

.02 Employers are not required to send other Forms W-4 unless notified by IRS in writing to do so.

.03 Employers may submit all information magnetically or electronically; or a combination of magnetic/electronic files and paper documents is acceptable, provided there are no duplications or omissions of documents. However magnetic/electronic filing is preferred and strongly encouraged.

.04 A Form W-4 with a written statement attached from the employee must be filed on paper, not on magnetic media. If filing paper Forms W-4, the employer may send them in each quarter with paper Forms 941. If the employer submits the paper Forms W-4 at any time other than quarterly, a cover letter must be submitted giving the employer's name, address, employer identification number (EIN), and the number of Forms W-4 included.

NOTE: MCC DOES NOT PROCESS PAPER RETURNS. PAPER RETURNS MUST BE FILED WITH THE APPROPRIATE SERVICE CENTER. SEE FORM 941 INSTRUCTIONS FOR THE APPROPRIATE SERVICE CENTER

SEC. 5. FORM 4419, APPLICATION FOR FILING INFORMATION RETURNS MAGNETICALLY/ELECTRONICALLY

.01 Employers, or their transmitters, who wish to file magnetically or electronically, must submit a Form 4419, Application for Filing Information Returns Magnetically/Electronically. Instructions for its completion are on the reverse of the form.

.02 Magnetic/electronic files may not be filed with **IRS/MCC** until authorization to file is received. Requests will be approved or disapproved within 30 days of receipt.

.03 Only applications of employers or transmitters, whose equipment meets the specifications in Part B, Sec. 2, 3, 4, 5 or 6 will be approved.

.04 Once authorization to file has been granted, a five-character alpha/numeric Transmitter Control Code (TCC) will be assigned. Approval will continue in effect in succeeding years provided the requirements of the current revenue procedure are met and there are no equipment changes by the employer or transmitter. Although a TCC may have already been assigned to a transmitter for the filing of information returns, the Form W-4 requires a separate TCC of its own. This TCC must appear on all transmittal forms submitted with magnetic/electronic files as well as other correspondence. The TCC must also be coded into positions 319-323 of the Form W-4 record. (See Part B, Sec. 7.)

.05 New applications (Forms 4419) are required whenever:

(a) You discontinue filing on magnetically/electronically for a year, in which case your TCC may have been reassigned. You may call IRS/MCC to verify if your TCC is still valid.

(b) You have used a service agency in the past, and they had their own TCC, to prepare your files but you now have computer equipment compatible with that of IRS, in which case you must request your own TCC.

SEC. 6. FILING DUE DATES

.01 Magnetic/electronic reporting of Forms W-4 to IRS must be at least quarterly (monthly reporting is encouraged). The following are the quarter end dates:

<i>Period Covered</i>	<i>Due Date</i>
January 1 thru March 31	April 30
April 1 thru June 30	July 31
July 1 thru September 30	October 31
October 1 thru December 31	January 31

.02 If any due date falls on a Saturday, Sunday, or legal holiday, the Forms W-4 are considered timely if they are filed on the next day that is not a Saturday, Sunday, or legal holiday.

SEC. 7. FILING FORMS W-4 MAGNETICALLY/ELECTRONICALLY

.01 A Magnetic media/electronic Reporting Package which includes the current revenue procedure and the necessary transmittal forms will be mailed to approved filers each year.

.02 If the employer chooses to file magnetically/electronically, then a Form 6466, Transmittal of Forms W-4 Reported Magnetically/Electronically, must be sent to the **IRS/MCC** as prescribed in Part A, Sec. 3.

.03 Form 6466 **MUST** be signed by the employer or the transmitter, service bureau, paying agent, or disbursing agent (all hereafter referred to as agent), on behalf of the employer if the agent has the authority to sign the affidavit under an agency agreement (either oral, written, or implied) that is valid under state law and adds the caption "FOR: (name of employer)."

.04 Although a duly authorized agent signs the affidavit, the employer(s) is held responsible for the accuracy of the Forms W-4 filed magnetically or electronically.

.05 DO NOT REPORT THE SAME INFORMATION ON PAPER DOCUMENTS THAT YOU REPORT MAGNETICALLY/ELECTRONICALLY. If you report part of your returns on paper and part magnetically or electronically, be sure that duplicate returns are not included on both.

- .06 Before submitting your magnetic/electronic file, include the following:
- (a) A signed Form 6466, Transmittal of Forms W-4 Reported Magnetically/Electronically along with a Form 6467, Transmittal of Forms W-4 Reported Magnetically/Electronically(Continuation), if you submit data for multiple employers. These forms must be mailed the same day electronic files are submitted.
 - (b) Your media (tape, diskette, or cartridge with an external identifying label.) Form 6468 describes the information which should be included on this self-prepared label.
 - (c) On the outside of the shipping container, affix the label IRB Special Projects. This label is included in the publication.
- .07 **IRS/MCC** will not return filers' magnetic media after it has been successfully processed. Should filers wish to know if their media was received by **IRS/MCC**, a delivery service that provides certification of delivery is recommended.
- .08 IRS cannot accept any Cash-On-Delivery (COD) or Charged-to-IRS shipments of reportable tax information that an individual or organization is legally required to file. Because of the high volume of data received and shipping cost involved, special shipping containers will not be returned.
- .09 Use this record format and processing capabilities to file Forms W-4 submitted for the quarter ending 06-30-1998 and for all subsequent filings.

SEC. 8. REPLACEMENT FILES

THE MAGNETIC MEDIA/ELECTRONIC SPECIFICATIONS CONTAINED IN PART B OF THIS REVENUE PROCEDURE MUST BE STRICTLY ADHERED TO. If files are unprocessable, they will be returned to you for replacement and re-submission, or submission of paper Forms W-4. Replacement files must be resubmitted to **IRS/MCC** within 45 days of the date of the letter. The media should be identified as replacement data by writing, typing or printing "Magnetic Media Replacement" on the external label used on the magnetic media and marking the replacement box on the Form 6466. If filing electronically, you will be prompted to enter an "R" in type of submission to identify a replacement file before transmission begins.

SEC. 9. EFFECT ON PAPER DOCUMENTS

- .01 Magnetic/electronic reporting to IRS eliminates the need to submit copies of paper Forms W-4.
- .02 If part of the Forms W-4 are reported magnetically/electronically and the remainder are reported on paper forms, the paper Forms W-4 must be mailed to the appropriate service center.

SEC. 10. DEFINITION OF TERMS

Employer	Generally, an employer is a person or organization for whom a worker performs a service as an employee. The employer has the right to direct and control the worker. A person or organization paying wages to a former employee after the work ends is also considered an employer.
Employee	One who performs services for an employer.
b	Denotes a blank position. Enter blank(s) when this symbol is used ("b"). This appears throughout the record descriptions.
EIN	Employer Identification Number that has been assigned by IRS.
File	For purposes of this procedure, a file consists of all magnetic/electronic records submitted by an employer or transmitter.
Special Character	Any character that is not a numeral, an alpha or a blank.
Taxpayer Identification Number (TIN)	May be either an Employer Identification Number (EIN); a Social Security Number (SSN); an IRS Individual Taxpayer Identification Number (ITIN) issued to an alien individual; or an IRS Adoption Taxpayer Identification Number (ATIN) assigned to children who are in the process of being adopted.
Transmitter	Person or organization preparing and/or submitting magnetic/electronic file(s).
Transmitter Control Code (TCC)	A five-character alpha/numeric number assigned by IRS to the transmitter prior to actual filing magnetically/electronically. This number is inserted in Positions 319-323 of your files and must be present before the file can be processed. An application Form 4419 must be filed with IRS to receive this number.

PART B. MAGNETIC MEDIA/ELECTRONIC SPECIFICATIONS

SEC. 1. GENERAL

.01 The specifications contained in this part of the revenue procedure define the required format and content of the records to be included in the magnetic/electronic file. Use this revenue procedure to file Forms W-4 submitted for the quarter ending June 30, 1998 and all subsequent filings.

.02 An external label must appear on each tape, tape cartridge and diskette submitted. Form 6468 details what information must be on the label. The diskettes used must be MS/DOS compatible.

SEC. 2. TAPE SPECIFICATIONS

.01. IRS/MCC can process most magnetic tape files if the following specifications are followed:

(a) 9-track EBCDIC (Extended Binary Coded Decimal Interchange Code) with:

- (1) Odd parity
- (2) Recording density—1600 or 6250 BPI
- (3) If you use UNISYS Series 1100, you must submit an interchange tape.

(b) 9-track ASCII (American Standard Coded Information Interchange) with:

- (1) Odd parity
- (2) Recording density—1600 or 6250 BPI

.02 All tape files must have the following characteristics:

- (a) 0.5 inch (12.7 mm) wide computer grade magnetic tape,
- (b) Tape thickness: 1.0 or 1.5 mils,
- (c) Reel diameter: 10.5 inch (26.67 cm), 8.5 inch (21.59 cm), or 7 inch (17.78 cm) and
- (d) Reel of tape up to 2400 feet (731.52 m).

.03 All records, including Header and Trailer Labels (if used) must be transmitted using the same density.

.04 *The tape records defined in this revenue procedure may be blocked subject to the following:*

- (a) *A block must not exceed 32,550 tape positions.*
- (b) *If the use of blocked records would result in a short block, all remaining positions of the block must be filled with 9's; however, the last block of the file may be filled with 9's or truncated. **Do not pad a block with blanks.***
- (c) *All records, except the header and trailer labels, may be blocked or unblocked. A record may not contain any control fields or block descriptor fields which describe the length of the block or the logical records within the block. The number of logical records within a block (the blocking factor) must be constant in every block with the exception of the last block which may be shorter (see item b above). The block length must be evenly divisible by 350.*
- (d) *All data records are a fixed record length of 350 positions and may not span blocks.*

.05 Labeled or unlabeled tapes may be submitted.

.06 For the purposes of this revenue procedure the following must be used:

Tape Mark:

- (a) Used to signify the physical end of the recording on tape.
- (b) For even parity, use BCD configuration 001111 (8421).
- (c) May follow the header label and precede and/or follow the trailer label.

.07 Do not submit an employee Form W-4 record without the required employer identification information. Every record must contain both employee and employer data.

SEC. 3. 5 ¼-INCH AND 3 ½-INCH DISKETTE SPECIFICATIONS

.01 To be compatible, a diskette file must meet the following specifications:

- (a) 5 ¼- or 3 ½-inches in diameter.
- (b) Data must be recorded in standard ASCII code.
- (c) Records must be a fixed length of 350 bytes per record.
- (d) Delimiter character commas (,) must not be used.
- (e) Positions 349 and 350 of each record have been reserved for carriage return/line feed (cr/lf) characters.
- (f) Filename of QWFTAX must be used. Do not enter any other data in this field. This extension will indicate the sequence of the diskettes within the file. For example, the first diskette will be named QWFTAX.001, the second diskette will be QWFTAX.002, etc.
- (g) A diskette file may consist of multiple diskettes as long as the file naming conventions are adhered to.
- (h) Diskettes must meet one of the following specifications:

Capacity	Tracks	Sides/Density	Sector Size
1.44 mb	96tpi	hd	512
1.44 mb	135tpi	hd	512
1.2 mb	96tpi	hd	512
720 kb	48tpi	ds/dd	512
360 kb	48tpi	ds/dd	512
320 kb	48tpi	ds/dd	512
180 kb	48tpi	ss/dd	512
160 kb	48tpi	ss/dd	512

.02 5 ¼- and 3 ½-inch diskettes are only acceptable if they were created using MS/DOS.

SEC. 4. TAPE CARTRIDGE SPECIFICATIONS

.01 In most instances, IRS/MCC can process tape cartridges that meet the following specifications:

- (a) Must be IBM 3480, 3490, 3490E, or AS400 compatible.
- (b) Must meet American National Standard Institute (ANSI) standards, and have the following characteristics:
 - (1) Tape cartridges will be ½-inch tape contained in plastic cartridges which are approximately 4-inches by 5-inches by 1-inch in dimension.
 - (2) Magnetic tape will be chromium dioxide particle based ½-inch tape.
 - (3) Cartridges must be 18-track or 36-track parallel (See **Note**).
 - (4) Cartridges will contain 37,871 CPI or 75,742 CPI (characters per inch).
 - (5) Mode will be full function.
 - (6) The data may be compressed using EDRC (Memorex) or IDRC (IBM) compression.
 - (7) Either EBCDIC (Extended Binary Coded Decimal Interchange Code) or ASCII (American Standard Coded Information Interchange) may be used.

.02 The tape cartridge records defined in this revenue procedure may be blocked subject to the following:

- (a) A block **must not** exceed 3,500 tape positions.
- (b) If the use of blocked records would result in a short block, all remaining positions of the block must be filled with 9s; however, the last block of the file may be filled with 9s or truncated. **Do not pad a block with blanks.**
- (c) All records, except the header and trailer labels, may be blocked or unblocked. A record may not contain any control fields or block descriptor fields which describe the length of the block or the logical records within the block. The number of logical records within a block (the blocking factor) must be constant in every block with the exception of the last block which may be shorter (see item b above). The block length must be evenly divisible by 350.
- (d) Records may not span blocks.

.03 Tape cartridges may be labeled or unlabeled.

.04 For the purposes of this revenue procedure, the following must be used:

Tape Mark:

- (a) Used to signify the physical end of the recording on tape.
- (b) For even parity, use BCD configuration 001111 (8421).
- (c) May follow the header label and precede and/or follow the trailer label.

Note: Filers should indicate on the external media label and transmittal Form 6466 whether the cartridge is 36-track or 18-track.

SEC. 5. 8MM, 4MM, AND QUARTER INCH CARTRIDGE SPECIFICATIONS

.01 In most instances, IRS/MCC can process 8mm tape cartridges that meet the following specifications:

- (a) Must meet American National Standard Institute (ANSI) standards, and have the following characteristics:
 - (1) Created from an AS400 operating systems only.
 - (2) 8mm (.315-inch) tape cartridges will be 2 ½-inch by 3 ¾-inch.
 - (3) The 8mm tape cartridges must meet the following specifications:

Tracks	Density	Capacity
1	20 (43245 BPI)	2.3 Gb
1	21 (45434 BPI)	5 Gb

- (4) Mode will be full function.
- (5) Compressed data is not acceptable.

- (6) Either EBCDIC (Extended Binary Coded Decimal Interchange Code) or ASCII (American Standard Coded Information Interchange) may be used. However, IRS/MCC encourages the use of EBCDIC. This information must appear on the external media label affixed to the cartridge.
- .02 The 8mm (.315-inch) tape cartridge records defined in this revenue procedure may be blocked subject to the following:
- (a) A block **must not** exceed 3,500 tape positions.
 - (b) If the use of blocked records would result in a short block, all remaining positions of the block must be filled with 9's; however, the last block of the file may be filled with 9's or truncated. **Do not pad a block with blanks.**
 - (c) All records, except the header and trailer labels, may be blocked or unblocked. A record may not contain any control fields or block descriptor fields which describe the length of the block or the logical records within the block. The number of logical records within a block (the blocking factor) must be constant in every block with the exception of the last block which may be shorter (see item (b) above). The block length must be evenly divisible by 350.
 - (d) Various COPY commands have been successful, however, the SAVE OBJECT COMMAND is not acceptable.
 - (e) Records may not span blocks.
- .03 For faster processing, IRS/MCC encourages transmitters to use header labeled cartridges. QWFTAX may be used as a suggested filename.
- .04 For the purposes of this revenue procedure, the following must be used:
- Tape Mark:*
- (a) Used to signify the physical end of the recording on tape.
 - (b) For even parity, use BCD configuration 001111 (8421).
 - (c) May follow the header label and precede and/or follow the trailer label.
- .05 IRS/MCC can only read one data file on a tape. A data file is a group of records which may or may not begin with a tape-mark, but must end with a trailer label. Any data beyond the trailer label cannot be read by IRS programs.
- .06 4mm (.157-inch) cassettes are acceptable with the following specifications:
- (a) 4 mm cassettes will be 2 ¹/₄-inch by 3-inch.
 - (b) The tracks are 1 (one).
 - (c) The density is 19 (61000 BPI).
 - (d) The typical capacity is DDS (DAT data storage) at 1.3 Gb or 2 Gb, or DDS-2 at 4Gb.
 - (e) The general specifications for 8mm cartridges will also apply to the 4mm cassettes.
- .07 Various Quarter Inch Cartridges (QIC) (1/4-inch) are also acceptable.
- (a) QIC cartridges will be 4" by 6".
 - (b) QIC cartridges must meet the following specifications:

Size	Tracks	Density	Capacity
QIC-11	4/5	4 (8000 BPI)	22Mb or 30Mb
QIC-24	8/9	5 (8000 BPI)	45Mb or 60Mb
QIC-120	15	15 (10000 BPI)	120Mb or 200Mb
QIC-150	18	16 (10000 BPI)	150Mb or 250Mb
QIC-320	26	17 (16000 BPI)	320Mb
QIC-525	26	17 (16000 BPI)	525Mb
QIC-1000	30	21 (36000 BPI)	1Gb
QIC-1350	30	18 (51667 BPI)	1.3Gb
QIC-2Gb	42	34 (40640 BPI)	2Gb

- (c) The general specifications that apply to 8mm cartridges will also apply to QIC cartridges.

SEC. 6. ASYNCHRONOUS (IRP-BBS) ELECTRONIC FILING SPECIFICATIONS

.01 Asynchronous electronic filing of Forms W-4, originals and replacements is offered as an alternative to magnetic media (tape, tape cartridge, or diskette) or paper filing. If the original file was sent magnetically, but was returned for replacement, the replacement may be transmitted electronically.

.02 The electronic filing of Forms W-4 is not affiliated with the Form 1040 electronic filing program. These two programs are totally independent, and filers must obtain separate approval to participate in each of them. All inquiries concerning the electronic filing of Forms W-4 should be directed to IRS/MCC. IRS/MCC personnel **cannot** answer questions or assist taxpayers in the filing of Form 1040 tax returns. Filers with questions of this nature will be directed to the Taxpayer Service toll-free number (1-800-829-1040) for assistance.

.03 Filers participating in the electronic filing program for Forms W-4 will submit their forms to IRS/MCC electronically and not through magnetic media or paper filing. Files submitted in this manner must be in standard ASCII code.

.04 The format of the record is the same for electronically filed records as it is for 5 ¹/₄- and 3 ¹/₂-inch diskettes, tapes, and tape cartridges; however, it must be in standard ASCII code.

.05 Filers must have a Transmitter Control Code (TCC) assigned to them prior to submitting their files electronically. (Filers who currently have a TCC for filing Forms W-4 do not have to request a second TCC for electronic filing.) Refer to Part A, Sec. 5, for information on how to obtain a TCC.

.06 Filers using IRP-BBS assign their own passwords and do not need special approval.

.07 With all passwords, it is the user's responsibility to remember the password and not allow the password to be compromised. However, if filers do forget their password, call **304-263-8700** for assistance.

☞ **Note: Passwords on the IRP-BBS are case sensitive.**

.08 Electronically filed Forms W-4 may be submitted to IRS/MCC 24 hours a day, 7 days a week. Technical assistance will be available Monday through Friday between 8:30 a.m. and 4:30 p.m. Eastern Time by calling **304-263-8700**.

.09 Filers may submit as many documents as they choose electronically. Filers are allowed 240 minutes a day; however, more time may be requested if needed.

.10 **Do not transmit data using IRP-BBS January 1 through January 7.** This will allow time for the IRP-BBS to be updated to reflect current year changes.

.11 Data compression is encouraged when submitting Forms W-4 by way of the IRP-BBS. MCC has the ability to decompress files created using several popular software compression programs such as ARC, LHARC, and PKZIP. Software data compression can be done alone or in conjunction with V.42bis hardware compression.

The time required to transmit Forms W-4 electronically will vary depending on the modem speed and the type of data compression used, if any. **The time required to transmit a file can be reduced by as much as 85 percent by using software compression and hardware compression.**

The following are actual transmission rates for 1099 Series filers achieved in test uploads at MCC using compressed files (PKZIP) and the XMODEM-1K protocol. The actual transmission rates will vary depending on the protocol that is used. (ZMODEM is normally the fastest protocol and XMODEM and KERMIT are the slower protocols.)

Transmission Speed in bps	500 Records	2500 Records	10000 Records
9600	40 sec	2 min 50 sec	12 min 21 sec
19200	31 sec	1 min 34 sec	7 min 1 sec
38400	17 sec	36 sec	4 min 7 sec

.12 Files submitted to IRP-BBS must have a unique filename; therefore, the IRP-BBS will build the filename that must be used. The name will consist of the filer's TCC, submission type (T = Test, P = Production, and R = Replacement) and a sequence number. Filers may call the file anything they choose on their end. The sequence number will be incremented every time the filers send, or attempt to send, a file. Record the upload date, time, and filename. This information will be needed by MCC in order to identify the file if assistance is required and to complete Form 6466.

.13 The results of the electronic transmission will be posted to the (F)ile Status area of the IRP-BBS; however, no further processing will occur until the signed Form 6466 is received. The transmitter must send or fax the signed Form 6466 the same day the electronic transmission is made. No electronic transmission is considered filed until a Form 6466 is received by IRS/MCC.

.14 Form 6466 can be ordered by calling the IRS toll-free forms and publication order number 1-800-TAX-FORM, (1-800-829-3676), downloaded from the IRP-BBS, or it may be computer-generated. If a filer chooses to computer-generate Form 6466, all of the information contained on the original form, including the affidavit, must also be contained on the computer-generated form.

.15 Forms 6466 are to be mailed to the following addresses:

If by Postal Service: 

IRS-Martinsburg Computing Center
Information Reporting Program
Attn.: Electronic Filing Coordinator
P. O. Box 1359
Martinsburg, WV 25402-1359

☞ **Note: The ZIP Code has changed from 25401-1359 to 25402-1359 for the IRS P.O. Box addresses for Martinsburg, WV.**

If by air or truck freight:



IRS-Martinsburg Computing Center
Information Reporting Program
Attn.: Electronic Filing Coordinator
Route 9 and Needy Road
Martinsburg, WV 25401

.16 A signed Form 6466 submitted for electronically filed Forms W-4 may be faxed to IRS/MCC at the following number: 304-264-5602. Faxed transmittals will allow IRS/MCC to begin processing the file immediately.

.17 The IRP-BBS is an electronic bulletin board system available to filers of Forms W-4. In addition to filing Forms W-4 electronically, the IRP-BBS provides other capabilities. Some of the advantages of IRP-BBS are as follows:

- (1) Notification within two weeks as to the acceptability of the data transmitted.
- (2) Immediate access to the latest changes and updates that affect the Information Reporting Program at IRS/MCC (program, legislative, etc.).
- (3) Access to publications such as the Publication 1245 as soon as they are available.
- (4) Capability to communicate with IRS/MCC personnel.
- (5) Ability to retrieve information and files applicable to the IRP-BBS.

.18 The IRP-BBS is available for public use and accessible using various personal computer communications equipment; however, electronic submission of Forms W-4 is limited to holders of valid TCCs. A TCC is not needed to access those portions of the IRP-BBS that contain forms and publications or to leave questions or messages for IRS/MCC personnel.

.19 Filers using IRP-BBS can determine the acceptability of files submitted by checking the file status area of the bulletin board. These reports are not immediately available but will be available two weeks after the transmission is received by IRS/MCC.

.20 Contact the IRP-BBS by dialing 304-264-7070. The communication software settings for IRP-BBS are:

- No parity
- Eight data bits
- One stop bit
- Full duplex

The communication software should be set up to use the fastest speed allowed by the filer's modem.

.21 Due to the large number of communication products available, it is impossible to provide specific information on a particular software package or hardware configuration. Filers should contact their software or hardware supplier for assistance.

.22 IRP-BBS software provides a menu-driven environment allowing access to different parts of IRP-BBS. Whenever possible, IRS/MCC personnel will provide assistance in resolving any communication problems with IRP-BBS.

.23 IRP-BBS can be accessed at speeds from 1200 to 28,800 bps. The speed is automatically negotiated for connection at the speed of the calling modem. The communication standards supported include Industry Standard 212A, V.22bis, V.32, V.32bis, V.34, and V.FC. Point-to-point error control is supported using the V.42 ITU-T standard or MNP 2-4. Data compression is supported using V.42bis ITU-T standard or MNP5.

.24 The following information will be requested to set up the filer's user profile when logging onto the IRP-BBS for the first time.

(1) Enter the letter, that corresponds to the filer's terminal, from the following:

<A> IBM PC	 IBM w/ANSI	<C> Atari
<D> ADM-3	<E> H19/Z19/H89	<F> Televid 925
<G> TRS-80	<H> Vidtex	<I> VT-52
<J> VT-100	<CR> if none of the above	

Most personal computers, clones, etc., will select the IBM PC emulation. Machines with color, CGA, EGA, or VGA should select IBM w/ANSI.

(2) Upper/lower case, line feed needed, O (zero) nulls after each <CR>, do you wish to modify this? (Most users answer no.)

Common User Problems

Problem	Probable Cause	Solution
File does not upload/download	Not starting communication when prompted by 'Awaiting Start Signal'	Start upload/download on filers end
All files not processed	Compressing several files into one filename	Compress only one file for every filename
Replacement needed	Original data does not meet processing and/or format requirements	Replacement must be submitted within 45 days of original transmission
Cannot determine file status	Not dialing back thru IRP-BBS to check the status of the file	Two weeks after sending a file, check under (F)ile Status for notification of acceptability
Transfer aborts before it starts	Transfer protocol mismatch	Ensure protocols match on both the sending and receiving ends

IRS Encountered Problems

<i>Problem</i>	<i>Probable Cause</i>	<i>Solution</i>
<i>Loss of carrier during session</i>	<i>Incorrect modem settings on user's end</i>	<i>Reference your modem manual about increasing the value of the S10 register</i>
<i>Unreadable screens after selecting IBM w/ANSI</i>	<i>ANSI.SYS driver not loaded in the user's PC</i>	<i>Select non ANSI under (Y)our settings</i>
<i>IRS cannot complete final processing of data</i>	<i>User did not send the Form 6466</i>	<i>Send completed Form 6466 the same day as the electronic transmission</i>
<i>IRS cannot determine which file is being replaced</i>	<i>User did not indicate which file is being replaced</i>	<i>Must enter the filename that is being replaced under the replacement option</i>
<i>IRS cannot determine the type of file being sent</i>	<i>User incorrectly indicated P, C, or R for the type of file</i>	<i>When prompted, enter the correct type of file data being sent</i>
<i>Replacement file not replaced within 45 days</i>	<i>User did not dial back thru IRP-BBS to check status of file</i>	<i>Two weeks after sending file check under (F)ile Status for notification of acceptability</i>
<i>Duplicate data</i>	<i>Transmitter sends corrections for entire file</i>	<i>Only submit corrections for incorrect records</i>

SEC. 7. FORM W-4 RECORD FORMAT AND RECORD LAYOUT


.01 This record is used to identify the employer, the employee, number of allowances, and other information that is reported on the paper Form W-4.

.02 ALL RECORDS MUST BE A FIXED LENGTH OF 350 POSITIONS.

.03 Do not begin any record at the end of a block or diskette and continue the same record into the next block or diskette.

FORM W-4 RECORD FORMAT

Field Position	Field Title	Length	Description and Remarks
1-9	Employee Tax Identification Number	9	REQUIRED. Enter the 9-digit number (TIN) assigned to the employee. DO NOT ENTER HYPHENS or ALPHA CHARACTERS. All zeroes, ones, twos, etc. will have the effect of an incorrect TIN.
10-44	Employee Name Line 1	35	REQUIRED. Enter the name of the employee whose TIN appears in field positions 1-9. Enter the name in the following order: first name, middle name (if present), and surname. (Use initials for the first and middle names where necessary to insure that the entire employee surname fits in the field.) If fewer than 35 characters are used, left-justify and fill unused positions with blanks. (1) A blank must be surrounded by alphas or continued to the end of the field (e.g., ab...b, aba). (2) A hyphen in the first position is to identify an employee with surname only. Hyphens must be surrounded by alphas or numerics and must never occur in the first position of a name unless immediately followed by a caret. (3) A caret is used to define an internal name control. It must immediately precede the employee surname in place of the blank. A second caret is used to separate a suffix from the surname (e.g., JOHN J.<BLACK; BILL<OAK<JR; AMY FERN<BROWN<MD).

 **Note:** The only allowable characters are alphas, blanks, numerics, ampersand, hyphens and slashes. A minimum of one and a maximum of two carets (<) can be used. Punctuation, such as, periods and commas are not allowed and will cause your file to be returned.

FORM W-4 RECORD FORMAT (CONTINUED)

Field Position	Field Title	Length	Description and Remarks
45-79	Employee Name Line 2	35	Optional. This line is designated for an “in care of” (c/o) situation. Left-justify and fill unused positions with blanks. Hyphens and slashes must be surrounded by alphas or numerics; ampersands must be surrounded by blanks; blanks must be surrounded by alphas or numerics or continued to the end of the field (e.g., ab...b aba).

☞ **Note:** The same exceptions apply as set forth in “Employee Name Line 1” plus the use of a percent sign (%) is not valid—use c/o if necessary.

80-114	Employee Street Address	35	REQUIRED. Enter mailing address of employee. Street address should include number, street, apartment or suite number (or P O Box if mail is not delivered to street address). Left-justify and fill unused positions with blanks. Position 80 must be an alpha or numeric; hyphens and slashes must be surrounded by alphas or numerics; ampersands must be surrounded by blanks; blanks must be surrounded by alphas or numerics or continued to the end of the field (e.g., ab...b, aba).
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☞ **Note:** The only allowable characters are alphas, blanks, numerics, ampersand, hyphens and slashes. Punctuation such as periods and commas are not allowed and will cause your file to be returned. For example, the address 210 N. Queen St., Suite #300 must be entered as 210 N Queen St Suite 300.

115-139	Employee City	25	REQUIRED. Enter the city, town or post office. If a foreign address, see Note 2 . Left-justify and fill unused positions with blanks. Enter APO or FPO, if applicable. Do not enter state and ZIP Code information in this field. Position 115 must be an alpha or numeric; hyphens must be surrounded by alphas or numerics; blanks must be surrounded by alphas or numerics or continued to the end of the field (e.g., ab...b, aba).
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☞ **Note 1:** The only allowable characters are alphas, blanks, numerics, ampersand, hyphens and slashes. Punctuation such as periods and commas are not allowed and will cause your file to be returned. For example, the city St. Louis must be entered as St Louis

☞ **Note 2:** For foreign addresses, you may use the 40 position address fields (city, state and zip) to provide the following information: city, province or state, postal code, and country name.

140-41	Employee State	2	REQUIRED. Enter the two-character location code of employee address—must be one of the following:
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☞ **Note 1:** For foreign addresses, enter xx from table below.

Location	Code	Location	Code	Location	Code
Alabama	AL	Kentucky	KY	Ohio	OH
Alaska	AK	Louisiana	LA	Oklahoma	OK
American Samoa	AS	Maine	ME	Oregon	OR
Arizona	AZ	Marshall Islands	MH	Pennsylvania	PA
Arkansas	AR	Maryland	MD	Puerto Rico	PR
California	CA	Massachusetts	MA	Rhode Island	RI
Colorado	CO	Michigan	MI	South Carolina	SC
Connecticut	CT	Minnesota	MN	South Dakota	SD
Delaware	DE	Mississippi	MS	Tennessee	TN
District of Columbia	DC	Missouri	MO	Texas	TX
Federated States of		Montana	MT	Utah	UT
Micronesia	FM	Nebraska	NE	Vermont	VT
Florida	FL	Nevada	NV	Virginia	VA
Georgia	GA	New Hampshire	NH	Virgin Islands	VI
Guam	GU	New Jersey	NJ	Washington	WA

Location	Code	Location	Code	Location	Code										
Hawaii	HI	New Mexico	NM	West Virginia	WV										
Idaho	ID	New York	NY	Wisconsin	WI										
Illinois	IL	North Carolina	NC	Wyoming	WY										
Indiana	IN	North Dakota	ND	Foreign Address,											
Iowa	IA	Northern		All Others	XX										
Kansas	KS	Mariana Islands	MP												
142–150	Employee ZIP Code	9	REQUIRED. Enter the valid nine-digit ZIP Code of employee. IF YOU ONLY HAVE FIVE (5) DIGITS AVAILABLE, LEFT-JUSTIFY AND ZERO FILL. Blank fill only if the employee’s ZIP Code is unavailable.												
151	Marital Status	1	REQUIRED. Enter appropriate code from the table below: <table><tr><td><i>Marital Status Designated</i></td><td><i>Code</i></td></tr><tr><td>Single</td><td>S</td></tr><tr><td>Married</td><td>M</td></tr><tr><td>Married, withhold at single rate</td><td>W</td></tr><tr><td>No marital status designated</td><td>A</td></tr></table>			<i>Marital Status Designated</i>	<i>Code</i>	Single	S	Married	M	Married, withhold at single rate	W	No marital status designated	A
<i>Marital Status Designated</i>	<i>Code</i>														
Single	S														
Married	M														
Married, withhold at single rate	W														
No marital status designated	A														
152	Exempt Status	1	REQUIRED. Enter “E” if employee claims exempt status; otherwise, enter blank.												
153	BLANK	1	Enter Blank.												
154–156	Allowances	3	REQUIRED. Must be a three (3) digit numeric field corresponding to the number of allowances claimed by employee. (It is necessary to file this Form W–4 with IRS if the number of allowances is more than ten (10) or exempt status is claimed.) Field must be right justified and zero filled. If no entry, or employee claimed exempt status, enter blanks.												
157–163	Additional Amount	7	REQUIRED. Enter any additional amount of withholding the employee wants deducted from each pay. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Do not enter dollar signs, commas, decimal points, or negative numbers. Right-justify and zero fill. If no entry, zero-fill.												
164–169	BLANK	6	Enter Blanks.												
170–178	Employer Identification Number	9	REQUIRED. The 9-digit number assigned to the employer. DO NOT ENTER HYPHENS, ALPHA CHARACTERS. All zeroes, ones, twos, etc. will have the effect of an incorrect TIN.												
179–213	Employer Name Line 1	35	REQUIRED. Enter the name of the employer as it appears on employment tax forms (e.g., Form 941). Any extraneous information must be deleted from this name line. Left-justify and fill with blanks. Position 179 must be alpha or numeric; hyphens and slashes must be surrounded by alphas or numerics; blanks must be surrounded by alphas or numerics or continued to the end of the field (e.g., ab...b, aba).												
 Note: The only allowable characters are alphas, blanks, numerics, ampersand, hyphens and slashes. Punctuation, such as, periods and commas are not allowed and will cause your file to be returned.															
214–247	Employer Name Line 3	34	If the employer name requires more space than is available in Employer Name Line 1, enter the remaining portion of the name in this field. Left- justify and fill with blanks. Position 214 must be alpha or numeric; hyphens must be surrounded by alphas or numerics; blanks must be surrounded by alphas or numerics or continued to the end of the field (e.g.,ab...b, aba).												

FORM W-4 RECORD FORMAT (CONTINUED)

Field Position	Field Title	Length	Description and Remarks
<p>☞ Note: The same exceptions apply as set forth in “Employer Name Line 1” plus the use of a percent sign (%) is not valid—use c/o if necessary.</p>			
248–282	Employer Street	35	REQUIRED. Enter mailing address of employer. Street address should include number, street, apartment or suite number (or P O Box if mail is not delivered to street address). Left-justify and fill unused positions with blanks. Position 248 must be alpha or numeric; hyphens must be surrounded by alphas or numerics; blanks must be surrounded by alphas or numerics or continued to the (e.g., ab...b, aba).
<p>☞ Note: The only allowable characters are alphas, blanks, numerics, ampersand, hyphens and slashes. Punctuation such as periods and commas are not allowed and will cause your file to be returned. For example, the address 210 N. Queen St., Suite #300 must be entered as 210 N Queen St Suite 300.</p>			
283–307	Employer City	25	REQUIRED. Enter the city, town or post office. Enter APO or FPO if applicable. Do not enter state and ZIP Code information in this field. Position 283 must be alpha or numeric; hyphens must be surrounded by alphas or numerics; blanks must be surrounded by alphas or numerics or continued to the end of the field (e.g., ab.b, aba).
<p>☞ Note: The only allowable characters are alphas, blanks, numerics, ampersand, hyphens and slashes. Punctuation such as periods and commas are not allowed and will cause your file to be returned. For example, the city St. Louis must be entered as St Louis.</p>			
308–309	Employer State Code	2	REQUIRED. Enter location code of employer. Must use abbreviation shown in the location abbreviation table for Employee Location Code (field positions 140–141).
310–318	Employer ZIP Code	9	REQUIRED. Enter the <i>valid</i> nine digit ZIP Code of employer. IF YOU ONLY HAVE FIVE (5) DIGITS AVAILABLE, LEFT-JUSTIFY AND ZERO FILL. Blank fill only if employer’s ZIP Code is unavailable.
319–323	Transmitter Control Code	5	REQUIRED. Enter 5-character Transmitter Control Code (TCC) assigned by IRS/MCC.
324–331	Form W-4 Date	8	REQUIRED. Enter date located on signature line of Form W-4. If no date entered, generate current system date. Format as YYYYMMDD (e.g. 19981231). Exempt Status Form W-4—Compare “year effective date” on Line 7 to signature date. If year entered on Line 7 is later than signature date, use Form W-4 date as a 01/01 receipt for subsequent calendar year (e.g., Line 7 of Form W-4 shows an exempt status date of 1999 but signature date is 19981031, use 19990101 as Form W-4 date.)
332–348	BLANK	21	Enter Blanks.
349–350	BLANK	2	Enter blanks, or carriage return/line feed (cr/lf) characters.

FORM W-4 RECORD LAYOUT

Employee Tax Identification Number	Employee Name Line 1	Employee Name Line 2	Employee Street Address	Employee City
1–9	10–44	45–79	80–114	115–139

FORM W-4 RECORD LAYOUT

Employee State	Employee ZIP Code	Marital Status	Exempt Status	Blank	Allowances
140-141	142-150	151	152	153	154-156

Additional Amount	Blank	Employer Identification Number	Employer Name Line 1	Employer Name Line 2
157-163	164-169	170-178	179-213	214-247

Employer Street	Employer City	Employer State Code	Employer ZIP Code	Transmitter Control Code
248-282	283-307	308-309	310-318	319-323

Form W-4 Date	Blank	Blank or cr/lf
324-331	332-348	349-350

SEC. 8. EFFECT ON OTHER DOCUMENTS

Revenue Procedure 92-80, Publication 1245 (Rev. 9-92), is superseded.

SEC. 9. EFFECTIVE DATE

Use the record length and processing capabilities of this revenue procedure to file Forms W-4 submitted for the quarters ending June 30, 1998 and for all subsequent filings.

I R B
Special Projects
 Box ____ of ____

I R B
Special Projects
 Box ____ of ____

I R B
Special Projects
 Box ____ of ____

I R B
Special Projects
 Box ____ of ____

I R B
Special Projects
 Box ____ of ____

I R B
Special Projects
 Box ____ of ____

Internal Revenue Service
 Martinsburg Computing Center
Special Projects
 P O Box 1359
 Martinsburg WV 25402

Internal Revenue Service
 Martinsburg Computing Center
Special Projects
 Route 9 and Needy Road
 Martinsburg WV 25401

(use this label for U S Postal deliveries)

(use this label for truck or air freight deliveries)

(Reproduce as needed)

To expedite handling, please affix this label, or a substitute label, to your OUTSIDE shipping container.

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Obligations of States and Political Subdivisions

REG-110965-97

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations; and notice of public hearing.

SUMMARY: This document withdraws portions of the notice of proposed rulemaking published in the **Federal Register** (59 F.R. 67658 [FI-72-88, 1995-1 C.B. 859]) on December 30, 1994. In T.D. 8757, the IRS is issuing temporary regulations that provide guidance to state and local governments that issue bonds for output facilities and to certain non-governmental persons that are engaged in the local furnishing of electric energy or gas using facilities financed with state or local bonds. These proposed regulations reflect changes made by the Tax Reform Act of 1986 and the Small Business Job Protection Act of 1996. The text of those temporary regulations also serves as the text of these proposed regulations. This document provides a notice of public hearing on these proposed regulations.

DATES: Written comments must be received by April 22, 1998. Outlines of topics to be discussed at the public hearing scheduled for April 28, 1998, at 10 a.m. must be received by April 7, 1998.

ADDRESSES: Send Submissions to: CC:DOM:CORP:R (REG-110965-97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-110965-97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly

to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_reggs/comments.html. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Allan B. Seller, 202-622-3980; concerning submissions and the hearing, Michael L. Slaughter, Jr., 202-622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Proposed regulations §§1.141-7 and 1.141-8, published on December 30, 1994 (59 F.R. 67658) addressed the application of the private activity bond tests of section 141(b)(2) to output contract for output facilities and the application of the \$15 million limitation on output facility financings of section 141(b)(4). These proposed sections are withdrawn. These sections were issued as part of proposed regulations under §§1.141-0 through 1.141-16, Definition of Private Activity Bonds, which were finalized in part in T.D. 8712 published in the **Federal Register** on January 16, 1997.

Sections 1.141-7T, 1.141-8T, 1.141-15T, 1.142(f)(4)-1T, and 1.150-5T published in T.D. 8757 are issued to provide guidance on certain aspects of the private activity bond restrictions under section 141 of the Internal Revenue Code.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that these regulations do not have a significant impact on a substantial number of small entities. This

certification is based upon the fact that in the years 1987 through 1993 a total of 61 different state or local government issuers of exempt facility bonds issued under section 142(f) for the local furnishing of electric energy or gas filed information returns with the Internal Revenue Service under section 149(e). Further, an election under section 142(f)(4) is in no event required to be filed with the Internal Revenue Service more than once by a person engaged in the local furnishing of electric energy or gas. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are regulations, consideration will be given to any written comments that are submitted timely (a signed original and eight (8) copies) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 28, 1998, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by April 22, 1998 and submit an outline of the topics to be discussed and the time to be devoted to each topic by April 7, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Michael G. Bailey and Allan

Seller, Office of the Assistant Chief Counsel (Financial Institutions and Products), and Nancy M. Lashnits, formerly of that office. However, other personnel from the IRS and Treasury Department participated in their development.

Partial Withdrawal of Notice of Proposed Rulemaking

Under the authority of 26 U.S.C. 7805, §§1.141-7 and 1.141-8 in the notice of proposed rulemaking that was published on December 30, 1994 (59 F.R. 67658) are withdrawn.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.141-7 is added to read as follows:

§1.141-7 Special rules for output facilities.

[The text of this proposed section is the same as the text of §§1.141-7T published in T.D. 8757.]

Par. 3. Section 1.141-8 is amended by adding the text of the section to read as follows:

§1.141-8 \$15 million limitation for output facilities.

[The text of this proposed section is the same as the text of §1.141-8T published in T.D. 8757.]

Par. 4. Section 1.141-15 is amended by adding paragraphs (f) through (i) to read as follows:

§1.141-15 Effective dates.

* * * * *

(f) through (i) [The text of proposed paragraphs (f) through (i) are the same as the text of §1.141-15T(f) through (i) published in T.D. 8757.]

Par. 5. Section 1.142(f)(4)-1 is added to read as follows:

§1.142(f)(4)-1 Manner of making election to terminate tax-exempt bond financing.

[The text of this proposed section is the same as the text of §1.142(f)(4)-1T published in T.D. 8757.]

Par. 6. Section 1.150-5 is added to read as follows:

§1.150-5 Filing notices and elections.

[The text of this proposed section is the same as the text of §1.150-5T published in T.D. 8757.]

Michael P. Dolan,
Deputy Commissioner of
Internal Revenue.

(Filed by the Office of the Federal Register on January 21, 1998, 8:45 a.m., and published in the issue of the Federal Register for January 22, 1998, 63 F.R. 3296)

Foundations Status of Certain Organizations Announcement 98-25

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

A Miriam Jamison Children Center
Foundation, Bakersfield, CA
Asian Community Immigration Clinic,
San Francisco, CA
The Berry Farm, Vashon, WA
Centralia Schools Foundation, Centralia,
WA
Childrens Rights Council of Illinois,
Pekin, IL
Childrens Safe House Inc., Philadelphia,
PA

Chipper of New Jersey Inc., Caldwell, NJ
Choice Inc-Creative Homeless Options
Involving Community Exchange,
Marietta, GA
Christmas in October Miami County,
Inc., Paola, KS
Christmas in September Inc., Butte, MT
Christos Society Inc., Louisville, KY
Christs Sanctified Holy Church
Foundation Trust of Atlanta, GA,
Clarkston, GA
Chronic Fatigue Syndrome Foundation of
Greater Baton Rouge, Inc., Baton
Rouge, LA
Citizens Foster Care Review Board Inc.,
Naples, FL
Citizens Health Care Foundation, El
Paso, TX
Daily Bread Inc., Bucyrus, KS
Dakar Foundation for the Performing
Arts, Berkeley, CA
Dakota Aids Life Foundation, Fargo, ND
East Palo Alto Teen Home Inc., E. Palo
Alto, CA
Ellis County Ministerial Alliance, Hays,
KS
Elmas Little Lambs, Jackson, MS
Emerald Coast Sailing Association Inc.,
Fort Walton Beach, FL
Florida Judicial Education Foundation
Inc., Tallahassee, FL
Florida Registry & Living Will Registry
of America Inc., Palatka, FL
Folio Theatre Company Inc., Chicago, IL
Food for Thought, Washington, DC
Fort Towson School and Community
Foundation, Ft. Towson, OK
Foxes for Kids Inc., Parker, CO
Franciscan Friars of Mary Immaculate
Inc., Mt. Morris, MI
Free the Children Inc., Cocoa, FL
Friends of Guatemala Inc., Toledo, OH
Friends of J.L. Long Middle School,
Dallas, TX
Friends of Jung in Fort Wayne Indiana
Inc., Ft. Wayne, IN
Fund to End the Deficit Inc., Silver
Spring, MD
Fuquay-Varina Area Education, Fuquay
Varina, NC
Fuse, Boulder, CO
Forney Pee Wee Association, Forney, TX
Greater East Canton Community
Development Association, E. Canton,
OH
Greater Houston Church Directory,
Houston, TX

Greater Houston Puppetry Guild,
 Houston, TX
 Hands Across Watts, Los Angeles, CA
 Hawaii Youth Congress, Honolulu, HI
 Head Injury Association of Kern County,
 Bakersfield, CA
 The Healing Forest Conservancy,
 Washington, DC
 Healthy Options for Teens, Portland, OR
 Helping Hand Vocational Training Camp,
 Orleans, CA
 Hemophilia-HIV Peer Association,
 Cardiff, CA
 Heritage Discovery Center Inc.,
 Mokelumne Hill, CA
 Heritage Village Committee Inc., Sidney,
 MI
 Hickman County Historical Society,
 Centerville, TN
 High Blood Pressure Control Program of
 Western New York Inc., Buffalo, NY
 The Highlands Pipes & Drum
 Incorporated, West Hills, CA
 High on Kids, Hummelstown, PA
 Hilo Rotary Club Foundation, Hilo, HI
 Hindu Mandir, San Jose, CA
 H I S Group Homes, Ceres, CA
 Historic Bullock Cemetery Association,
 Coppell, TX
 Historic Hudson Community Association,
 Newark, OH
 Hoboken Waterfront Corporation,
 Hoboken, NJ
 Hollywood Youth Advisory Committee
 Inc., Hollywood, FL
 Holopolis Inc., Chattanooga, TN
 Holton Youth Baseball and Softball Inc.,
 Holton, KS
 Holy Spirit Ministries, Las Vegas, NV
 Horizon International Relief Services,
 San Diego, CA
 Hot Springs Youth Center, Hot Springs, SD
 Housing Hope Properties, Everett, WA
 Housing Opportunity Center Mountain
 Vista Villas, Phoenix, AZ
 Houston Alternative Ministers
 Fellowship Inc., Houston, TX
 Houston Area Association for Bilingual
 Education, Spring, TX
 Houston Area Community Development
 Corporation, Houston, TX
 Houston Area Dekalb Association,
 Houston, TX
 Houston Institute for the Protection of
 Youth Inc., Houston, TX
 Houston Safe Boating Council Inc.,
 Houston, TX
 Houston Slam & Jam, Houston, TX
 Houston Songwriters Performing Artists,
 Galena Park, TX
 Houston Wee Care Shelter, Houston, TX
 HRS Employee Disaster Relief Fund,
 Tallahassee, FL
 Hudson Volunteer Fire Department Inc.,
 Lufkin, TX
 Hula Hui O Kawai Aloha, Waimanalo, HI
 Jesus Christ Unlimited Evangelistic
 Association Incorporated, Kokomo, IN
 Jesus House Inc., Florence, AL
 Jesus is Alpha and Omega Ministries
 Inc., Houston, TX
 Jesus Saves and Heals Ministries Inc.,
 Tampa, FL
 Jet Age Museum of Technology Inc.,
 Richardson, TX
 Jewish Learning Foundation, Chicago, IL
 Mass Healing Foundation, Olympia, WA
 Matanuska Valley American Baptist
 Homes Inc., Palmer, AK
 McKinley District Housing Association,
 Tacoma, WA
 The Medical Staff of Santa Barbara
 Cottage Hospital, Santa Barbara, CA
 Metamorphosis, Gardena, CA
 Mexican Dialysis Assistance League,
 Santa Paula, CA
 Mid-State Evangelistic Crusade Inc.,
 Paso Robles, CA
 Mission Global Harvest, Huntington
 Park, CA
 Montreux Healthy Start Foundation,
 Reno, NV
 Morningside Group Home Inc., Los
 Angeles, CA
 Mothers for Help Inc., Kirkland, WA
 Mount Hope-Helix Heights Residents
 Association Inc., San Diego, CA
 Multicultural Assistance Program,
 Corvallis, OR
 Myrtlewood Youth Services Inc.,
 Corvallis, OR
 Child Abuse Prevention Committee of
 Albuquerque-Bernalillo County Inc.,
 Albuquerque, NM
 Child Care Inc., Grand Junction, CO
 Chris Keeney Fund, Houston, TX
 Christ in My Life Productions
 Foundation, Inc., Indianapolis, IN
 Christian Action Council of Ministry and
 Education, Lancaster, PA
 Chuck Cooper Youth Development
 Association, Pittsburgh, PA
 CHWPC Education and Training Fund,
 Washington, DC
 Dale Youth Soccer Club Limited,
 Chesterfield, VA
 Dallas Chinese Community Center,
 Richardson, TX
 Denver Dry Development Corporation,
 Denver, CO
 Depere Development Corporation,
 Depere, WI
 Disabled Professionals Network,
 Cleveland, OH
 Disabled Sports USA Adaptive Ski
 Program, Albuquerque, NM
 Dolores Foundation Inc., Chamblee, GA
 Dolphin Alliance Inc., Melbourne Beach,
 FL
 Dover Housing Development Inc., Dover,
 DE
 Dovia of the Pikes Peak Region Inc.,
 Colorado Springs, CO
 Down Syndrome Interest Group of
 Delaware County, Upper Darby, PA
 Educational Adventures Inc., Sanford, FL
 Educational Council for Hope and
 Opportunity, Inc., New Orleans, LA
 Educational Enhancement Services Inc.,
 Salt Lake City, UT
 Educational Foundation Inc., Houston,
 TX
 Freedom Club Inc., Amarillo, TX
 Freedom Forum Inc., Colleyville, TX
 Freedom From Drugs Outreach
 Movement, Detroit, MI
 Freedom House Inc., Cleveland, OH
 Freedom Ministries Incorporated,
 Martinsville, VA
 Freedom Now Inc., Chicago, IL
 Fremont Area Elderly Needs Fund,
 Fremont, MI
 Fremont Soup Kitchen Inc., Fremont,
 OH
 Grace Prison Outreach Inc., Austell, GA
 Graceville Informed Parents Inc.,
 Graceville, FL
 Graham County Community Foundation
 Inc., Hill City, KS
 Hatchers Day Care & Learning Center
 Inc., Augusta, GA
 Hatteras Island Maritime Museum Inc.,
 Hatteras, NC
 Haven Foundation Inc., Parma, OH
 Haven House of Pickaway County,
 Circleville, OH
 Helping Hand Group Incorporated,
 Indianapolis, IN
 Helping Miami Rebuild Inc., Miami, FL
 Helping Others Purse Excellence Hope,
 Birmingham, AL
 Hope Community Charitable Trust,
 Plano, TX
 Hope for Life, Westchester, OH

Hope House-Franklin County Christian Caring Center Inc., Ottawa, KS
 Hope House of Delaware Valley, Rosemont, PA
 Jacksonville Concert Ballet Company Inc., Jacksonville, FL
 Jacksonville Education Foundation Inc., Jacksonville, TX
 Jaguars Amateur Basketball Organization of Prince Georges, Laurel, MD
 James Memorial Preservation Society LTD, Williston, ND
 Kankakee Valley Tennis Association Inc., Bourbonnais, IL
 Kansas City African Tennis Association, Kansas City, MO
 Kansas Crime Prevention Association, Salina, KS
 Kansas Institute on Alcohol and Other Drug Abuse in Higher Education, Topeka, KS
 Latrobe Chapter Society of Architectural Historian, Washington, DC
 Lee Headquarters Trust Inc., Ronceverte, WV
 Leesville-Vernon Boys and Girls Club Inc., Leesville, LA
 Legal Aid Society of the Martin County Bar Association Inc., Jensen Beach, FL
 Legal Assistance for Vietnamese Asylum Seekers, Fairfax, VA
 Lehighon Ambulance Association Inc., Lehighon, PA
 Lend a Hand Inc., Fort Smith, AR
 Lesbian Gay and Bisexual Community Center Inc., Miami Beach, FL
 Mindpower Incorporated, Hammond, IN
 Mini-Productions Inc., Pittsburgh, PA
 Ministerio Torre Fuerte Inc., Miami, FL
 Ministries of Faith Hope and Love Inc., Jacksonville, FL
 Ministry Center Inc., Lima, OH
 Ministry for Theological Education, Memphis, TN
 Minnesota Deaf Skiers Association, St. Paul, MN
 Minnesota Environmental Initiative Inc., Minneapolis, MN

Minnesota Foundation for Communication and Education Through Storytelling, Minneapolis, MN
 Minnesota Ninth District American Legion Band, Inc., Crookston, MN
 Minnesota Walk to Emmaus Inc., Oakdale, MN
 Minolas Place of Texas Inc., Houston, TX
 Minority Advisory Panel, Southfield, MI
 Miracle House Ministries Inc., Fort Lauderdale, FL
 Network Ministries Inc., Tallahassee, FL
 Network of Ambassadors NOA Foundation, Omaha, NE
 New Abundant and Everlasting Life Ministries, Inc., Naperville, IL
 New Beginnings Day Care & Pre-School, Inc., Clyde, KS
 New Caney Horizons Inc., New Caney, TX
 New Center North Neighbors, Detroit, MI
 New Century Learning & Development Center, Inc., Duluth, MN
 New Covenant Ministries Counseling and Training Center, Mesa, AZ
 Stafford County Alcohol and Drug Services, Inc., St. John, KS
 New Day Multi Purpose Service Center, Inc., Detroit, MI
 New Directions Association, Washington, DC
 New Directions Training USA Inc., Cave Creek, AZ
 New Dominion Housing Inc., Norfolk, VA
 New Focus Tennessee, Parrotsville, TN
 New Friends Inc., Altamonte Springs, FL
 New Generation Youth Center Inc., Plymouth, NC
 Norma B. Summerville Scholarship Foundation, Akron, OH
 Norma Wilson Ministries Inc., Harrison, AR
 Norman Life Services Inc., Norman, OK

North American Conference for Itinerant Evangelists, Minneapolis, MN
 North American Strawberry Growers Research Foundation, Inc., Amherst, OH
 North Bean Street Neighborhood Association, Spartanburg, SC
 North Canton Chautauqua Foundation, Inc., Canton, OH
 North Carolina Shakespeare Festival Endowment Fund, High Point, NC
 North Carolina Interfaith Network on Alcoholism and Other Drug Abuse, Kannapolis, NC
 North Central PA Military Museum Inc., Williamsport, PA
 North Dade Trauma Center Inc., Sunny Isles, FL
 North Detroit Jets Athletic Association, Detroit, MI
 North Ellis County Economic Development Commission, Inc., Red Oak, TX
 North End Dental Care Assistance Inc., Flint, MI
 North Henry Athletic Association Inc., Stockbridge, GA
 North Jefferson Charity Run, Gardendale, AL
 North Muskegon Booster Club Inc., N. Muskegon, MI

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it ap-

plies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C.—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.

E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contribution Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.

PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Proc.—Revenue Ruling.
S—Subsidiary.
* * * * * S.P.R.—
Statements of
Procedural Rules.
Stat.—Statutes
at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 1997–27 through 1997–52 will be found in Internal Revenue Bulletin 1998–1, dated January 5, 1998.

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¹ A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1997–27 through 1997–52 will be found in Internal Revenue Bulletin 1998–1, dated January 5, 1998.

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